80-1153

Supreme Court, U. S.
FILED
DEC 22 1980
MICHAEL RODAK, JR., CLERK

NO.----------

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

ELVA J. HAUGEN
Petitioner
vs.

GLEN C. TAYLOR, HELEN C. CANNON, C. DONALD BROWN, JAMES C. ANDRUS, JOHN F. ANDERSON, CLARE W. WOODBURY, and DAVID CANTER, INDIVIDUALLY and as member of the BOARD OF SCHOOL TRUSTEES of the CLARK COUNTY SCHOOL DISTRICT;

and KENNY C. GUINN, INDIVIDUALLY and as SUPERINTENDENT of the CLARK COUNTY SCHOOL DISTRICT; RICHARD F. BROWN, Associate Superintendent, Personnel Division; CHARLES SILVESTRE, Assistant Personnel Manager; JOHN T. PAUL, Associate Superintendent; THERON SWAINSTON, Assistant Superintendent, Elementary Education; CECIL R. JACKSON, Principal, E. W. Griffith Elementary School; and KENNETH MARSHALL, Principal, Lois Craig Elementary School, INDIVIDUALLY and as employees of CLARK COUNTY SCHOOL DISTRICT;

DWAINE AVERY, JOSEPHINE C. BYRD, GERALD CONNERS, DON L. ESTES, and JOHN D. HARRINGTON, INDIVIDUALLY and as members of the PROFESSIONAL REVIEW PANEL and employees of the CLARK COUNTY SCHOOL DISTRICT.

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ELVA J. HAUGEN
1841 N. Decatur
Las Vegas, Nevada 89108
702–648–1116
Proper Person

TWO CATEGORIES OF QUESTIONS ARE PRESENTED

STATUTE OF LIMITATIONS

1. Whether the 6 year statute of limitations on written contracts in Nevada should have been applied by the lower courts rather than a 3 year statute.

   a. Whether the statute of limitations, NRS 11.190 (3) (a) entitled "liability created by statute" is applicable to the REMEDIAL statute 42 U.S.C. 1983.

   b. If so, whether NRS 11.190 (3) (a) is unconstitutional or constitutionally defective or invalid because it violates the equal protection clause of the Fourteenth Amendment of the United States Constitution as applied in this case by not providing an equal number of years to enforce a federal right as the State of Georgia, which is 20 years.

DUE PROCESS

1. Whether the Board of School Trustees of the Clark County School District who removed Petitioner from the payroll at the end of the working day of January 6, 1972:

   1. without cause;
   2. without stating a reason;
   3. without notice;
   4. without a hearing; and
   5. without following state statutory or Constitutional Due Process procedures for dismissal of teachers;

constituted a fair and impartial tribunal as required by the Due Process Clause of the Fourteenth Amendment when they heard the dismissal action 3½ months later on April 20, 1972.

LIST OF ALL PARTIES

Glen C. Taylor, Helen C. Cannon, C. Donald Brown, James C. Andrus, John F. Anderson, Clare W. Woodbury, David Canter, Kenny C. Guinn, Richard F. Brown, Charles Silvestre, John T. Paul, Theron Swainston, Cecil R. Jackson, Kenneth Marshall, Dwaine Avery, Josephine C. Byrd, Gerald Conners, Don L. Estes and John D. Harrington.

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Belton v. Traynor, 483 F.2d 82.

Board of Regents of State Colleges et al. v. Roth, 408 U.S. 564; 92 S.Ct. 2701; 33 L.Ed.2d 548.

Downs v. Conway School District, 328 F.Supp. 338.

Glus v. Brooklyn E. Dist. Terminal, 359 U.S. 231; 78 S.Ct. 760; 3 L.Ed.2d 770.

Goldbery v. Kelly, 397 U.S. 254; 90 S.Ct. 1011; 25 L.Ed.2d 287.

Graham v. Richardson, 403 U.S. 367; 91 S.Ct. 1848.

Harkless v. Sweeny Independent School District of Sweeny, Texas, 388 F.Supp. 738.

Harrison v. Clark County School District, LV-1164.

McAllister v. Magnolia Petroleum Co., 357 U.S. 221; 78 S.Ct. 1201; 2 L.Ed.2d at 1271.

Turner v. Staggs, 510 P.2d 879.

UAW v. Hoosier Cardinal Corporation, 383 U.S. 696; 86 S.Ct. 1007; 16 L.Ed.2d 192.

OPINIONS

On September 23, 1980 the Ninth Circut Court of Appeals denied Petitioner's petition for a rehearing and the suggestion for the rehearing en banc was rejected.

On July 21, 1980 the Ninth Circuit Court of Appeals affirmed the judgment of the District Court dismissing the action on an unidentified 3 year statute of limitations. They decided that the Notice of Claim did not suspend the right to proceed in federal court and that Petitioner's action accrued the date the dismissal letter was written.

On June 26, 1978 the District Court of Nevada dismissed the action with prejudice on the basis of the United States Magistrate's Report.

On May 12, 1978 the United States Magistrate dismissed the action on an unidentified 3 year statute of limitations.

On April 26, 1972 the Board of Trustees of the Clark County School District wrote a letter of dismissal without stating any evidence relied on or the date the dismissal was to become effective.

On February 2, 1972 the Professional Review Panel wrote its stigmatizing report recommending Petitioner's dismissal without identifying any evidence relied on.

On February 2, 1972 the Board of School Trustees removed Petitioner from the payroll effective at the end of the working day of 1-6-72.

REFERENCE OF APPENDIX

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GROUNDS FOR JURISDICTION

The Ninth Circuit Court of Appeals has decided an important question of federal law which has not been settled but needs to be settled by this Court:

The applicable statute of limitations for an action applying the 42 U.S.C. 1983 REMEDIAL statute.

2. The Ninth Circuit Court of appeals decided a federal question in a way that conflicts with applicable decisions of this Court:

When two statutes of limitations are applicable—apply the LONGER.

3. The Ninth Circuit Court of Appeals has rendered a decision in conflict with other Courts of Appeals:

Some circuits determine the RIGHT that has been violated and then check to determine the applicable statute of limitations for an action applying the 42 U.S.C. 1983 REMEDIAL statute. The Ninth Circuit "lumps" all Rights together and applies a statute of limitations applicable to RIGHTS created by statute entitled "liability created by statute" to those actions—irregardless of whether the Common Law RIGHT, embodied in the Fourteenth Amendment, had a longer or a shorter period of enforcement.

4. Has so far departed from the accepted and usual course of judicial proceedings and has so far sanctioned such a departure by a lower Court as to call for an exercise of this Court's power of supervision:

The applicable statute of limitations for written contracts is 6 years in Nevada—not 3 years.

5. Respondents, under color of State law deprived Petitioner of many of the Fundamental Constitutional RIGHTS to Life, Liberty, Property, Due Process and Equal Protection of law.

The judgment sought to be reviewed was dated and entered on July 21, 1980, and is embodied in the Memorandum of the Ninth Circuit Court of Appeals.

An Order denying rehearing was dated and entered September 23, 1980.

The Notice of Appeal to this Court was filed in the Ninth Circuit Court of Appeals on October 14, 1980.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV, Section 1:

..."No State shall make or enforce any law which shall abridge the privileges or immunties of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTES

28 U.S.C. 1254.:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or crim inal case, before or after rendition of judgment or decree;..

28 U.S.C. 1343

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

42 U.S.C. 1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regualtion, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. 1985 Conspiracy to interfere with civil rights

Third....in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

NEVADA REVISED STATUTES

LIMITATION OF ACTIONS

Actions Other than for the Recovery of Real Property

11.190 Periods of limitations prescribed. Actions other than those for the recovery of real property, unless further limited by NRS 11.205 or by or pursuant to the Uniform Commercial Code, can only be commenced as follows:

1. Within 6 years:

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceeding sections of this chapter.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

41.036 Conditions, limitations on actions against state, counties, cities, unincorporated towns, other political subdivivions.

3. Every claim against any other political subdivision of the state shall be presented, within 6 months from the time the cause of action accrues, to the governing body of that political subdivision. No action may be brought unless the governing body refuses to approve or fails within 90 days to act upon the claim.

387.325 Limitation of actions on bills incurred by trustees. No action can be maintained against any board of trustees upon any bill not presented for payment to the board of trustees within 6 months of the time when the bill was incurred.

NRS 391.312
NRS 391.313
NRS 391.314
NRS 391.3195

Georgia 3-704 (4360– Statutory rights; recovery of wages, overtime, etc.

All suits for the enforcement of rights accruing to individuals under statutes, acts of incorporation, or by operation of law, shall be brought within 20 years after the right of action shall have accrued:...

STATEMENT OF FACTS

REFERENCES

Mrs. Haugen–Petitioner
Clark County School District–District
Board of School Trustees–Board
Clark County Classroom Teachers' Association–Union
Assemblyman and Petitioner's attorney–Bryan
District's attorney–Petroni
Reading Improvement Program– RIP
Fourteenth Amentment of the United States Constitution–Fourteenth Amendment
Nevada Revised Statutes– NRS

Mrs. Haugen, M.E., a highly successful tenured teacher, had a valid signed written contract with the Clark County School District for 9-1-71 through 6-8-72.

Petitioner's eighth Contract represents the 'property interest' of continued employment which is protected by procedural due process of the Fourteenth Amendment of the United States Constitution. Petitioner had more than an abstract need or desire for this 'property interest'; she had more than a unilateral expectation of it; Petitioner's had a legitimate claim of entitledment to be reemployed for each succeeding year.

Respondents breached this contract when they removed Petitioner from the payroll "at the end of the working day of January 6, 1972.* They breached it when Superintendent Guinn suspended Petitioner "without pay at the beginning of the school day on Friday, January 7, 1972."

On April 26, 1972 the Board wrote the 'Letter of Dismissal.'

On October 25, 1972 the Notice of Claim was presented to the School Board.

On January 23, 1973 Petitioner became able to sue.

On March 9, 1973 Petitioner was notified that the Board had not answered.

On October 7, 1975, Petitioner filed this action.

There is a 6 year statute of limitations on written contracts in Nevada.

***(It is presumed that Respondents met in secret at the School Board's meeting of January 6, 1972, made their decision to dismiss Petitioner, from which decision Superintendent Guinn wrote his letter of suspension, dated January 7, 1972.)**

Petitioner, a tenured teacher, had, as a matter of established law, a legal, vested and beneficial right to continued employment by the District. The importance of this issue is that it requires more substantial evidence to deprive someone of a vested and valuable right than it does to deprive someone who has no such right.

Superintendent Guinn sent a letter to Petitioner notifying her that she was suspended without pay...effective with the beginning of the school day of Friday, January 7, 1972...pursuant to NRS 391.314 and that she was requested to attend a meeting to be held on January 10, 1972.

This suspension did not provide the minimal procedures for Due Process which include a statement of the reasons why she was being suspended, notice of a hearing and a hearing to determine if a cause exists, PRIOR to the deprivation of her pay.

Under Nevada law at that time, Petitioner should have remained on the payroll until after a hearing.

Respondents envoked a statute designed for extra-ordinary circumstances wherein a teacher had been charged with a felony or the teacher's presence in the classroom posed an immediate threat to the safety of her students.

This statute is extremely vague. A Superintendent merely has "to believe that a cause exists" and "be of the opinoin" that the "immediate suspension is in the best interest of the children." He does not have to state the reason or have any evidence– merely on "whim and caprice."

*On January 5, 1972 the principal told Petitioner that children could be removed from the RIP program by parents written requests.

Four parents had written requesting that their children be removed from the RIP program.

Nevertheless the principal told Petitioner to send the children to the RIP program (in another room) which she agreed to do.

Petitioner asked the principal to put his order in writing, which he did.

About 6 p.m. the principal decided to observe Petitioner's highly successful reading program in Petitioner's room on January 6, 1972 and the RIP program on January 7, 1972.

On January 6, 1972 the principal told Petitioner BOTH orally (that he was coming in to see her and those kids had better be there) and in writing (by approving Petitioner's revised Daily Lesson Schedule which removed the children from the RIP program and ordered Petitioner to take necessary action): to honor the parents' written requests to remove the four children from the RIP program. Petitioner followed his instructions to the letter and has it in writing that she did.

Respondents made no attempts to show that an extreme em-emergency type situation existed whereby a denial of a PRIOR hearing was warranted.

On January 13, 1972 Superintendent Guinn, made the inconceivable, incomprehensible charges of "insubordination" and "Neglect of Duty."

Petitioner allegedly "Neglected her Duty "by not teaching after she was suspended.

Petitioner was allegedly "insubordinate" after she was suspended.

Petitioner was allegedly 'insubordinate" for FOLLOWING the principal's oral and written orders, on ONE day –January 6, 1972.

Respondents made no connection between the untimely charge of "insubordination" and "in the best interest of the children."

On January 31 and February 1, 1972 a "hearing" (Kangaroo Kourt)* was held before a panel, appointed by State officials, consisting of a principal and four teachers-all employees of the District and being paid by the District while serving on the panel–all lacking in legal expertise and under the direction of Petroni, the District's counsel, wherein Petitioner was deprived of

*Petitioner was excluded from the "hearing" room while the witnesses testified against her; she was not given the names of the witnesses or the nature of their testimony prior to the hearing. She was not allowed to cross-examine the witnesses; whereas the Respondents were permitted to cross-examine Petitioner. She was prevented from being represented by counsel–someone skilled in the arts of cross-examination by the Union; (the sole bargaining agent for the teachers of Clark County , under the threat that if she went to her attorney they would have nothing more to do with her). She was not allowed to challenge any of the members of the panel as being biased as provided for by statute. She was denied a request for a continuance. She was forced to testify even though she was ill on January 31, 1972 before a panel that was mentally fatigued after listening to the District's testimony for about 6 hours; after testifying for only a few minutes the Panel adjourned and she was denied the opportunity to resume her testimony on February 1, 1972 by the Union. The panel allowed inadmissable evidence. Petitioner does not recall whether she was allowed to present about 65 letters from parents, teachers, administrators, highly recommending her as a teacher and asking that she be retained. In about 306 pages of transcript ONLY 1 sentence related to Petitioner's success with children. The District's attorney stated, "There's no denying Petitioner is an exceptional teacher." (Petitioner's students scored higher than the students in 14 other schools.)

Substantive Due Process.

Although the lay panel, under the guidance of Petroni, the District's counsel, found extreme conflict between the testimonies of Petitioner and her principal they supported the recommendation for dismissal.

The Board by-passed all the statutory procedures for the dismissal of a teacher. The law requires that a teacher be admonished and that a reasonable effort be made to assist the teacher to correct whatever appears to be the cause for potential dismissal and allow a reasonable time for improvement, not to exceed 3 months.

Respondents manner of dismissal not only violated every elementary Fundamental Right to Due Process but also created a lasting stigma which foreclosed all opportunities for future employment as a public, private, or parochial school teacher in Clark County and elsewhere.*

Petitioner went to Respondent Woodbury before the hearing. He asked her why she han't come sooner—it was too late-the Board had already decided to dismiss her and there was nothing he could do. After reading the transcripts the Board felt that the Union representative lost her case for her.

A brief "hearing" was held on Arpril 20, 1972—limited to oral arguments.

On March 9, 1973 Doug Deaner declined to go further with the case. After talking to Bryan, Petitioner's attorney, and Petroni he didn't think she'd make a good witness.

Petitioner did not sleep on her rights. Realizing her lack of legal expertise and her need for an attorney she kept looking.

During the next 3 years Petitioner contacted over 200 attorneys who thought she had a good case—until they talked to Petroni and/or Bryan. Petroni told Petitioner "that she was not

***The abrupt manner of removing Petitioner from the classroom created the impression among fellow teachers, parents of her students, friends and neighbors that "The District must have had 'something' on her to have dismissed her so quickly." It is inconceivable that an exceptional and dedicated teacher could be "dismissed" for NO REASON. Yet, it happened.**

The facts in this case are backed with Respondents' signed documents. Nevertheless the people who read them are left with the feeling that there must have been something seriously wrong with Petitioner, because No One—but No One gets fired from the School District. Petitioner is the first one that she is aware of that had her contract "jerked out from under her" in the middle of the school term—unless convicted of a felony.

fit to be a teacher"* and was alleged to have said that she was lacking in intelligence, emotionally unbalanced and mentally ill. Petroni told Petitioner that many attorneys had called him and when he finished talking to them they didn't want to have anything more to do with her.

Petitioner filed her compliant in propery person on October 7, 1975 based on the Fourteenth Amendment, envoking the jurisdiction of the Cout pursuant to 28 U.S.C. 1343 (3) (4) and applying the Remedial statutes: 42 U.S.C. 1983 & 1985.

Respondents moved to dismiss on the grounds that the complaint failed to allege facts which would support a cause of action; and that the action was untimely.

This action was brought in the Eighth Judicial District Court of the State of Nevada:

On January 10, 1977 the order denying rehearing was filed.

On February 4, 1977 the Notice of Appeal was filed.

On February 28, 1977 the Supreme Court filed an order sua sponte alleging the Notice of Appeal was not timely filed.

Pursuant to NRAP 46 (b) Petitioner could not challenge the order in proper person.

The Writ of Certiorari to the United States Supreme Court was denied May 31, 1977 (76-6551), 431 U.S. 942; 97 S.Ct. 2659; 53 L.Ed.2d 261 (1977).

THIS IS PETITIONER'S LAST CHANCE TO BE HEARD.

Petitioner is not lacking in stamina, verstility, creativity, or adaptability. During her 5:30 a.m. to 10 p.m. working hours (7 days a week) she engages in various roles: chief cook and bottle washer, janitor, secretary, teacher, first aide attendant, personnel director, audio-visual director, Administrator, purchasing and contracting agent, stock lady, counselor, public-relations director, research and development specialist, curriculum developer, Pastor, music director, pianist, song writer, choregrapher, author, art director, typesetter, layout artist, publisher, promoter and distributor. She is also Nevada's second lady contractor. She designed, drew the plans (approved by an architect) and superivsed the construction of an addition unto the orignial school which included 4 classrooms, 4 bathrooms and a kitchen. When necessary she does legal research. In her spare time she also enjoys knitting, crocheting, gardening, hooking rugs, square dancing and traveling.

Petitioner's Kindergarten students have had top scores in the nation for the past 6 or 7 years on the Metropolitan Reading Readiness Test. Her methods and materials are so effective that even 2 year olds read.

STATUTE OF LIMITATIONS

POINT I

The Ninth Circuit Court of Appeals did not apply the Nevada 6 year statute of limitations for Written Contracts in the instant case. Their decision sanctioned a departure from the accepted and usual course of judicial proceedings which is to apply the 6 year statute of limitations to actions based on written contracts in Nevada.

The FACTS speak for themselves:

Below is a copy of the valid contract between Petitioner and the Clark County School District for 9-1-71 through 6-8-72:

Clark County School District

CONTRACT BETWEEN EMPLOYEE AND TRUSTEES

STATE OF NEVADA COUNTY OF CLARK

This CONTRACT, made and entered into by and between the Board of School Trustees of the Clark County School District, party of the first part, and

ELVA J HAUGEN
476-32-0673

$18,749.00 031

party of the second part, hereinafter called employee.

WITNESSETH: That the party of the first part does hereby employ and contract with the employee in position in the aforementioned District, in accordance with the School Laws of Nevada and the rules and regulations prescribed by the State Board of Education and State Superintendent of Public Instruction. This contract may be abrogated only for legal cause as provided in Title 34 of the Nevada Revised Statutes or by mutual consent, or by the provisions indicated below, which are hereby made a part of this contract.

1. A satisfactory evidence contract to legally employed in the public schools of Nevada carries for or the holds a Nevada Certificate of appropriate classification. The Nevada School Code places responsibility for proper certification, at all times, upon the employee.

2. Salary to be subject to monthly deductions for the Public Employees Retirement System of the State of Nevada, withholding taxes required by the United States Treasury Department, group insurance, and credit union payments, and any other deductions approved by the Clark County Board of School Trustees when requested in writing by the employee.

3. In case this contract is not confirmed by the trustees, no salary or employee insurance shall be subsequent and no warrant issued for services rendered by the employee of short duration by this contract.

4. The payment of compensation or any installment thereof under the terms of this contract shall release upon the acceptance, receipt, or acquittance of any employee prior to the close of the scheduled term. Such acceptance shall also release from the date of termination of any employee under the provisions of this contract, unless otherwise ordered by the Board.

5. Assignments requiring additional pay for extra duty or extended supervision may be made at any time during the life of this contract. These assignments also may be terminated at any time during the life of the contract. Commissions therefore authorized may be adjusted in proportion to the length of the assignment terminated.

6. Absence during the life of this contract, the employee may be allowed to retain the assistance on the regular salary and schedule of the salary schedule that is justified by him or her training and experience, as provided in accordance and regulations of the Clark County School District. Transcripts for additional graduate credit must be on the Personnel Office not later than October 1, to qualify placement on the salary schedule.

7. A satisfactory attendance may be disclosed or any complained on examples by THE CHAPTER 391 of Title 34 of the Nevada Revised Statutes.

8. The services of the employee are to commence at such time, and are conferred to such school or schools and such services or positions and at such times as may be designated by the Superintendent of the designated superintendent.

9. The employee reaffirms the oath to support the Constitution of the United States and the Constitution of the State of Nevada.

10. Policies and Regulations of the Board of Trustees are a part of this contract by reference as though set forth in full or attached and amended from time to time during the term of this contract.

IN WITNESS WHEREOF, the said parties have hereunto executed their names in triplicate hereof the day and year first above written.

Signed G. C. Lee

Signed John Mendenhall Clerk — Board of School Trustees

Signed Elva J. Haugen Date 8-4-71

Date signed by employee

Below is a copy of the letter of suspension "without pay at the commencement of the school day of January 7, 1972": without cause, without stating a reason, without notice, without a prior hearing and without following state statutory procedures and in violation of the Due Process Clause of the Fourteenth Amendment:

CLARK COUNTY SCHOOL DISTRICT

LAS VEGAS, NEVADA 89109

[redacted] EAST FLAMINGO ROAD - TELEPHONE [redacted]

BOARD OF SCHOOL TRUSTEES

[redacted]

REGISTERED MAIL
RETURN RECEIPT REQUESTED

January 7, 1972

Mrs. Elva Haugen
5196 Sawyer
Las Vegas, Nevada 89108

Dear Mrs. Haugen

This is to notify you that you are suspended without pay from your position as a teacher with the Clark County School District, effective with the beginning of the school day on Friday, January 7, 1972.

This action is taken in accordance with Nevada Revised Statutes, Section 391.314 of Title 34, Nevada School Law.

You are requested to attend a meeting in Mr. Theron Swainston's office at 1:30 PM Monday, January 10, 1972 to discuss this action. An investigation will be made of your situation and further recommendation will be made regarding your employment status with the Clark County School District.

Sincerely,

Kenny C. Guinn, Superintendent

KCG/ld

AN EQUAL OPPORTUNITY EMPLOYER

Below is a copy of the payroll record dated 2-2-72 confirming Petitioner's removal from the payroll at the end of the working day of January 6, 1972:

EMPLOYEE STATUS

HAUGEN ELVA

SAWYER LAS VEGAS NEV

CLARK COUNTY SCHOOL DISTRICT

The Board arbitrarily, capriciously and maliciously terminated Petitioner PRIOR to any hearing before them. (EVEN PRIOR to receiving a recommendation for dismissal from the Superintendent as required by statute.)

Below is a copy of the letter of dismissal from the Board which does not state the date the dismissal was to become effective or any evidence relied on in determining that Petitioner was "insubordinate" because there was none. (Petitioner should have been "on the payroll" until APRIL 26, 1972 but obviously wasn't. Evidence relied on should have been stated.)

CLARK COUNTY SCHOOL DISTRICT
LAS VEGAS, NEVADA 89109

[redacted]

[redacted]

REGISTERED MAIL
Return Receipt Requested

April 26, 1972

Mr. Richard H. Bryan, Attorney at Law
First National Bank Building - Suite 920
Las Vegas, Nevada 89101

RE: Elva J. Haugen - Dismissal

Dear Mr. Bryan:

As attorney for Elva J. Haugen, this letter is to notify you of the decision of the Board of School Trustees of the Clark County School District in the dismissal of your client as a teacher in the Clark County School District.

After reviewing the findings and recommendations of the Professional Review Panel as provided in NRS 391.31945, and having given you the opportunity to argue in behalf of your client on April 20, 1972 in regard to these findings, it is the decision of the Board that the findings and recommendations are substantial as to the charge of insubordination and are therefore affirmed by this Board.

This decision is based upon the evidence presented, the transcript of the Professional Review Panel Hearing, and the report and recommendations of the Review Panel.

Sincerely,

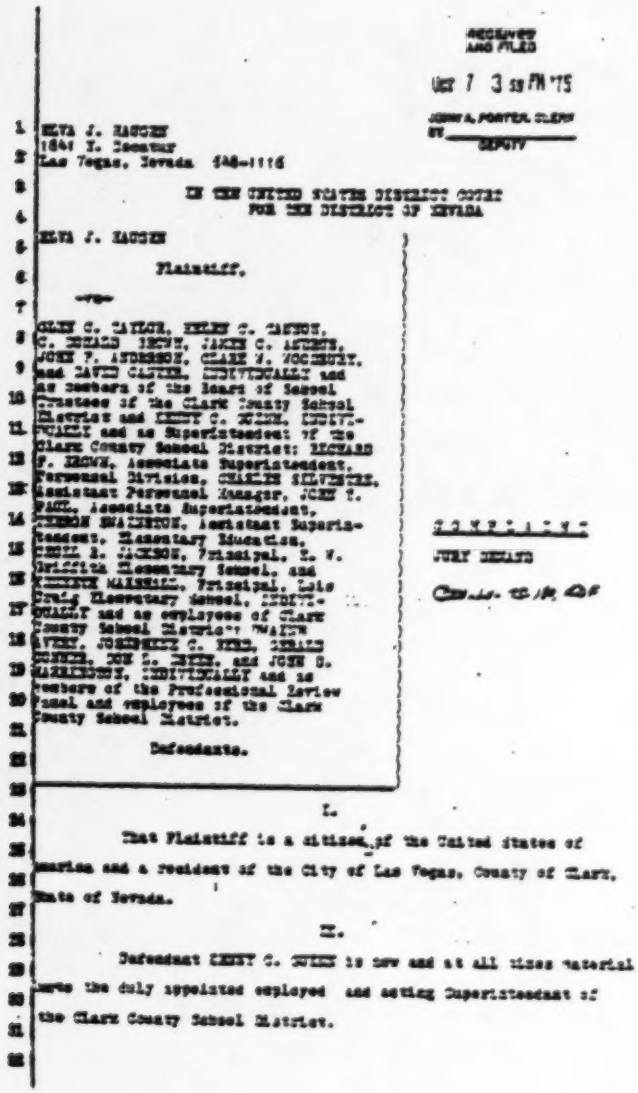
Glen C. Taylor, President
Board of School Trustees

GCT:gr

AN EQUAL OPPORTUNITY EMPLOYER

Holding a hearing on April 20, 1972 to determine if a teacher, who was dismissed 3½ months earlier, should be dismissed is as incomprehensible and useless as starting to take "the Pill" to prevent pregnancy when one is 3½ months pregnant.

Below is a copy of the first page of this action which was filed October 7, 1975:



RECEIVED AND FILED

OCT 7 3 39 PM '75

JOHN A. PORTER, CLERK

BY _____ DEPUTY

ELVA J. HAUGEN
1841 E. Desert
Las Vegas, Nevada 548-1116

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

ELVA J. HAUGEN

Plaintiff,

-vs-

GLEN C. TAYLOR, HELEN C. CLEVER, C. DONALD DICKY, JAMES C. ADAMS, JOHN P. ANDERSON, CLAIR W. WOODBURY, and DAVID CARTER, INDIVIDUALLY and as members of the Board of School Trustees of the Clark County School District and KENNY C. GUINN, INDIVIDUALLY and as Superintendent of the Clark County School District; RICHARD P. BROWN, Associate Superintendent, Personnel Division, CHARLES SILVESTRI, Assistant Personnel Manager, JOHN T. PAGE, Associate Superintendent, [illegible] SWAINSTON, Assistant Superintendent, Elementary Education, [illegible] JACKSON, Principal, L. W. Griffith Elementary School, and [illegible] MARSHALL, Principal, Lois Craig Elementary School, INDIVIDUALLY and as employees of Clark County School District; WALTER [illegible], JOSEPHINE C. [illegible], DONALD [illegible], JOE L. [illegible], and JOHN D. [illegible], INDIVIDUALLY and as members of the Professional Review Panel and employees of the Clark County School District.

Defendants.

COMPLAINT

JURY DEMAND

I.

That Plaintiff is a citizen of the United States of America and a resident of the City of Las Vegas, County of Clark, State of Nevada.

II.

Defendant KENNY C. GUINN is now and at all times material was the duly appointed employed and acting Superintendent of the Clark County School District.

Below is a copy of the applicable statute of limitations for actions on Written Contracts in Nevada:

LIMITATION OF ACTIONS 11.190

ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY

11.190 Periods of limitations prescribed. Actions other than those for the recovery of real property, unless further limited by NRS 11.205 or by or pursuant to the Uniform Commercial Code, can only be commenced as follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged in a store account.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property; but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting such waste or trespass.

The limitations period for written contracts is 6 years in Nevada–irregardless of whether the teacher's contract was with a Private, Parochial or Public school.

Obviously there is no 3 year statute of limitations on written contracts in Nevada or special provisions for those breaches of contract done under Color of State Law.

CONCLUSION: It is obvious:

1. That Petitioner had a written contract with Clark County School District for 1971-72 school term:

2. That Respondents breached this contract on January 6, 1972 by removing Petitioner from the payroll;

3. That the action was filed on October 7, 1975;

4. That the applicable statute of limitations on Written Contracts is 6 years in Nevada;

THEREFORE: This action was commenced within the 6 year limit for Written Contracts in Nevada.

THIS ACTION IS, INDEED, TIMELY.

No further argument should be necessary. HOWEVER, since Petitioner wants to be reinstated and this is her last chance for EVEN being accorded the opportunity to have a "Due Process" hearing wherein a determination could be based on the merits, she is presenting all arguments which further support the timeliness and merit of this action for this Honorable Court's consideration.

ADDITIONAL POINTS

I. Petitioner complied with all statutory prerequisits:

Below is a copy of the "claims" or "demand" statute:

> **41.036 Conditions, limitations on actions against state, counties, cities, unincorporated towns, other political subdivisions.**
>
> 1. No action may be brought under NRS 41.031 against a county without complying with the requirements of NRS 244.245 to 244.255, inclusive, or against a city without complying with the requirements of NRS 268.020, or against an unincorporated town without complying with the provisions of NRS 269.085, or against the state or any agency or other political subdivision of the state without complying with the requirements of subsection 2 or 3 of this section.
>
> 2. Every claim against the state arising out of contract shall be presented in accordance with the provisions of NRS 353.085 or 353.090, and every claim for refund in accordance with the provisions of NRS 353.110 to 353.120, inclusive. Every other claim against the state or any of its agencies shall be presented to the ex-officio clerk of the state board of examiners within 6 months from the time the cause of action accrues. He shall within 10 days deliver a copy of the claim to the risk management division of the department of administration, and refer the claim to the appropriate state agency, office or officer for investigation and report of findings to the board. No action may be brought unless the board refuses to approve or fails within 90 days to act upon the claim.
>
> 3. Every claim against any other political subdivision of the state shall be presented, within 6 months from the time the cause of action accrues, to the governing body of that political subdivision. No action may be brought unless the governing body refuses to approve or fails within 90 days to act upon the claim.
>
> (Added to NRS by 1965, 1414; A 1969, 1117; 1979, 629)

> **387.325 Limitation of actions on bills incurred by trustees.** No action can be maintained against any board of trustees upon any bill not presented for payment to the board of trustees within 6 months of the time when the bill was incurred.
>
> [154:32:1956]

Below is a copy of the Notice of Claim filed on October 25, 1972 by Doug Deaner, attorney:

NOTICE OF CLAIM

TO: BOARD OF SCHOOL TRUSTEES: GLEN C. TAYLOR, HELEN C. CANNON, JOHN F. ANDERSON, CLARE W. WOODBURY, C. DONALD BROWN, JAMES C. ARMOUR, DAVID CARTER and KENNY C. GUINN, and

TO: ROSS R. GLENN, Director of Accounting, 2832 E. Flamingo Road, Las Vegas, Nevada

COMES NOW, ELVA HAUGEN and makes the following statement:

That on January 7, 1972, ELVA HAUGEN was effectively terminated by the Clark County School District. That after her administrative review, she was terminated because of insubordination. That the actions of the Clark County School District was arbitrary and capricious. That there was no evidence submitted as to her insubordination.

Therefore, ELVA HAUGEN was terminated unjustly and without reason and has lost a yearly salary in the sum of $6,167.000 in actual damages and $30,000.00 in punitive damages.

DEANER & DEANER

By /s/ J. Douglas Deaner
J. DOUGLAS DEANER
Attorneys for ELVA HAUGEN
109 South Third Street, #307
Las Vegas, Nevada 89101

I HEREBY CERTIFY that the above and foregoing claim against the Clark County School District is just and reasonable and that the claim is now due and owing and unpaid.

/s/ ELVA HAUGEN
ELVA HAUGEN

Subscribed and Sworn to before me
this 25th day of October, 1972.

NOTARY PUBLIC - STATE OF NEVADA
CLARK COUNTY
NOTARY DEANER DEANER
My Commission Expires Jan 24, 1976

Below is a copy of Doug Deaner's letter stating that the School Board had 60 (90) days to answer but had not done so.

DEANER & DEANER

March 9, 1973

Elva Haugen
5196 Sawyer
Las Vegas, Nevada 89108

Dear Mrs. Haugen:

The School Board had 60 days to answer. They have not done so. You may pursue any effort you may see fit but this office declines to go further with this case. Please come in and pick up your file at your convenience.

Sincerely,

DEANER & DEANER

J. DOUGLAS DEANER

JDD/sag

CONCLUSION: It is obvious that Petitioner complied with the above statute.

HOWEVER: There is conflict between the federal and State Court decisions on the "claims" statute:

1. On July 21, 1980 the Ninth Circuit Court of Appeals decided that the Notice of Claim did not suspend the right to proceed in federal Court under †1983 and †1985 in the instant case.

2. On May 5, 1969 the same District Judge dismissed, with prejudice, another teacher's action for failure to file a claim prior to filing the action in the Harrison v. Clark County School District case—Civil LV 1164. The appelate Court dismissed the action thereby affirming the decision on August 11, 1970 (No. 25,895.)

3. On June 6, 1973 the Supreme Court of Nevada in Turner v. Staggs (510 P.2d 879) decided that NRS 41.036 and other "claims" statutes were unconstitutional because they did not provide equal protection for victims of govennmental torts as private torts.

CONCLUSION: This conflict needs to be settled by this Court because its applicability, at the time, establishes a basis, if necessary, for determining the correct date of accrual in the instant case.

The date of accrual would be about January 23, 1973 when Petitioner first became eligible to file and maintain an action which is about 90 days after the claim had been filed; rather than April 26, 1972, the date that Respondents wrote the, untimely, letter of dismissal.

II. Those actions which would have shorter periods of limitations are not barred when combined with actions with longer statutes of limitations:

In McAllister v. Magnolia Petroleum Co., 357 U.S. 221; 78 S.Ct. 1201 at 1206; 2 L.Ed.2d at 1271 (1958), Mr. Justice WARREN delivered the opinion of the Court:

..."for the reasons stated hereafter, we simply hold that where an action for unseaworthiness is combined with an action under the Jones Act a court cannot apply to the former a shorter period of limitations than Congress has prescribed for the latter."

Mr. Justice BRENNAN concurred with: (p. 1208)

"It thus seems to me that the three year limitation on the Jones Act remedy, 45 U.S.C. 56, 45 U.S.C.A. 56 is the ready and logical source to draw upon for determining the period within which the federal right may be enforced. This period should be applied in an action for unseaworthiness brought in a state court, just as it would be applied by the state courts in actions brought under the Jones Act. Engel v. Davenport, supra." (271 U.S. 33; 46 S.Ct. 410; 70 L.Ed. 813.)

CONCLUSIONS: If two or more statutes of limitations are applicable in an action the Longer period of limitations is applied and both causes of actions are heard.

THEREFORE: In the instant case the Longer period of limitations is 6 years on a written contract, and both the contract and conspiracy causes should be heard.

III. The Ninth Circuit Court of Appeals has rendered a decision in conflict with the decision of another Court of Appeals on the matter of a teacher's contract:

In Harkless v. Sweeny Independent School District of Sweeny, Texas, 388 F. Supp. 738, 749 (1975) Judge Noel stated:

..."in this case, the limitations period is four years, as provided in either Vernon's Tex. Rev. Civ. Stat. Ann. Art 5527 (the contract limitation) or Art. 5529 (the "catch-all" limitations). Guerr v. Manchester Terminal Corp., 350 F.Supp. 529, 532 (S.D.Tex. 1972).

In Beard V. Stephens, 372 F.2d 685 at 688, Cir. Judge Godbold spelled out the procedure for determining the statute of limitations:

..."The problem is a two-step one—first, what under federal law is the "essential nature" of the claim, and second, what statute of limitations would the state courts hold applicable to this type or class of claim. Bertha Building Corp. V. National Theaters Corp., 269 F.2d 785 (2d Cir., 1959), cert. denied, 361 U.S. 960; 80 S.Ct. 585; 4 L.Ed.2d 542 (1960)."

CONCLUSION: In the 42 U.S.C. 1983 teacher action for Nonrenewal of contract the Texas District Court determined the

nature of the RIGHT to be protected was a contract; then it checked the statute of limitations applicable to contracts and found that Texas had a 4 year statute of limitations which had not expired; therefore, that action was timely.

THEREFORE: As applied to the instant 42 U.S.C. 1983 teacher action for Breach of Contract the Nevada District Court should have determined that a contract RIGHT needed to be protected; checked the statute of limitations applicable to contracts in Nevada; found that there is a 6 year limit on contract actions; found that this period would not expire until 1978 and decided that the ACTION IS TIMELY. (It is difficult to determine if United States Magistrate Ward enacted and enforced--by the stroke of his pen--a 3 year statute of limitations on either a written contract or a REMEDY.)

IV. Attorney Interference.

Petitioner has not slept on her rights. Respondents have prevented her from engaging a competent attorney. Petitioner has been physically and orally threatened and attempts have been made to intimidate her so that she wouldn't proceed with this case.

In Downs v. Conway School District 328 F.Supp. 338, 349 (1971) Senior District Judge Clary cited Edwards v. Habib, 130 U.S. App. D.C 126: 397 F.2d 687 (1968), cert. denied; 393 U.S. 1016; 89 S.Ct. 618; 21 L.Ed.2d 560:

> **"A citizen, be he teacher or layman, has the legal right to seek redress be it judicial or administrative for substantial danger and/or threats to his health and/or safety and a court cannot sanction attemps to so intimidate a citizen, that they forego such fundamental rights."**

In Bleton v. Traynor 384 F.2d 82, 86 (1967) Circuit Judge Craven cited Glus V. Brooklyn E. Dist. Terminal, 359 U.S. 231, 233; 78 S.Ct. 760, 762; 3 L.Ed.2d 770 (1959):

> **..."no man may take advantage of his own wrong." see generally Northern Metal Co. v. United States, 350 F.2d 833,837-838 (3d Cir. 1965). And the misrepresentation need not have been made fraudulently. Scarborough v. Atlantic Coast Line R.R., 202 F.2d 84,86 (4th Cir. 1953).**

CONCLUSION: Respondents should not be allowed to take advantage of maliciously violating many of Petitioner's Fundamental RIGHTS.

THEREFORE: Respondents should be barred from EVEN asserting the statute of limitations as a defense.

POINT II

The Ninth Circuit Court of Appeals has decided an important question of federal law which has not been but should be settled by this Court.

Whether the statute of limitations entitled "liability created by statute" is applicable to the REMEDIAL statute 42 U.S.C. 1983.

If so, whether NRS 11.190 (3) (a) violates the equal protection clause of the Fourteenth Amendment becuase it does not provide the same number of years to enforce a federal cause of action as the State of Georgia, which is 20 years.

TWO DISTINCT CLASSIFICATIONS OF RIGHTS

I. Those RIGHTS which existed AT COMMON LAW

A. Those RIGHTS which come under the general categories established in the Fourteenth Amendment:

1. THE RIGHT TO LIFE
2. THE RIGHT TO LIBERTY

In Board of Regents of State Colleges et al v. Roth, 408 U.S. 564, 572; 92 S.Ct. 2701, 2702; 33 L.Ed.2d 548, Mr. Justice STEWART defines Liberty:

..."the right of the individual to contract,..."

3. THE RIGHT TO PROPERTY

In Board of Regents v. Roth, supra, (p. 2709):

..."Certain attributes of "property" interest protected by procedural due process emerge from these decisions. To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."

4. THE RIGHT TO DUE RPOCESS
   a. Decisions must be stated—not secret
   b. Legal cause
   c. Statement of reasons, notice and a hearing
   d. Hearing before deprivation—at a meaningful time
   e. Confrontation and Cross-examination
   f. Right to counsel of one's choosing
   h. Statement of reasons and evidence relied on
   i. Enforcement of applicable laws
5. THE RIGHT TO EQUAL PROTECTION OF THE LAW

II. Those RIGHTS CREATED BY STATUTE:

1. The Right to vote;
2. The Right for equal accommodations;
3. The Right to be free from invideous discrimination because of race, color, creed, sex, age, poverty, or (state residence [?]); and others.

CONCLUSION: Upon examination of the two distinct Classifications of RIGHTS it is obvious that Petitioner's cause of action is based on those RIGHTS which existed at Common Law and are embodied in the Fourteenth Amendment of the United States Constitution: Life, Liberty, Property, Due Process and Equal Protection.

FURTHERMORE: Respondents have not identified any of Petitioner's RIGHTS , which they violated, that were created by statute.

CLASSIFICATION OF LIMITATIONS OF ACTIONS

I. The Statute of Limitations applicable to those RIGHTS which existed AT COMMON LAW.

A. There is NO "general Statute of Limitations" that is applicable to all Common Law RIGHTS in Nevada;

B. The Statute of Limitations on Common Law RIGHTS is divided into 2 distinct sections in Nevada:

1. Actions for the recovery of Real Property;
2. Actions other than for the recovery of real property:
   a. Each of the various RIGHTS which existed at Common Law has its applicable Statute of Limitations:
      (1) As previous exhibited there are 6 years on written contracts in Nevada.
      (2) There are 4 years on those actions not otherwise provided for in Nevada–conspiracy.

II. The Statute of Limitations applicable to those RIGHTS CREATED BY STATUTE:

A. Nevada has enacted a "general" 3 year Statute of Limitations entitled "liabilites created by statute" applicable to those RIGHTS created by Nevada statute.

III. There is NO statute of Limitations for REMEDIES in Nevada Revised Statutes.

CONCLUSION: REMEDIES are not limited by statute. REMEDIES are limitless. The Period of Enforcement of RIGHTS is limited by statute.

Statutes of Limitations are applicable to BOTH:

1. those RIGHTS which existed at Common Law; and
2. those RIGHTS Created by State Statutes.

The Statute of Limitations varies from 1-6 years in Nevada (depending on the Common Law Right); whereas, the Statute of Limitations for those Rights Created by Statute has one "general" 3 year "Liability Created by Statute" in Nevada.

As established in the section on RIGHTS, Respondents have not identified any of Petitioner's Rights Created by Statute which they violated that would warrant the use of this statute. FURTHERMORE: As established in the section on RIGHTS it was Petitioner's Fundamental Rights to Life, Liberty, Property, Due Process and Equal Protection (RIGHTS which existed at Common Law and guaranteed in and by the Fourteenth Amendment) that Respondents violated.

More specifically: Respondents violated Petitioner's RIGHT to the "property interest" of continued employment which was embodied in and evidenced by the written contract, previously exhibited, when they dismissed her on January 6, 1972, without Due Process.

THEREFORE: The applicable statue of limitations is the statute for written contracts which is 6 years in Nevada.

Petitioner filed her Complaint on October 7, 1975 which was within the 6 year limit.

THIS ACTION IS, INDEED, TIMELY.

POINT II A: 42 U.S.C. 1983

A primary question is whether the statute entitled "liability created by statute" is applicable to the REMEDIAL statute 42 U.S.C. 1983.

When the federal legislature enacted the Civil Rights Acts it included one section, 42 U.S.C. 1983, as a REMEDY to enforce those RIGHTS.

The name "CIVIL RIGHTS ACTS" immediately makes readers think that all the sections established RIGHTS. This is obviously not true.

42 U.S.C.1983 is the REMEDIAL statute applied in "Civil actions for deprivation of rights:

> **"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."**

CONCLUSION: There are NO RIGHTS created in Section 1983 of the Civil Right Acts.

There is NO STATUTE of LIMITATIONS adopted in Section 1983 of the Civil Rights Acts.

Since there is NO RIGHT created, there is NO basis for a Statute of Limtiations.

Section 1983 is a REMEDIAL statute.

As previously established: NRS 11.190 (3) (a) is a Statute of Limitations for RIGHTS Created by Statute--NOT REMEDIES.

THEREFORE: NRS 11.190 (3) (a) is not applicable to the REMEDIAL statute: 42 U.S.C. 1983.

NRS 11.190 (3) (a) is not applicable to the instant case.

POINT IIB: APPLICABILITY OF NRS 11.190 (3) (a)

This section is included to prove that even if there were a RIGHT created by statute that Respondents have violated NRS 11.190 (3) (a) could not be applied because the Fourteenth Amendment prohibits enforcing a State enacted statute that would deprive a citizen of Life, Liberty, or Property without Due Process and Equal Protection of the laws.

A primary question is whether NRS 11.190 (3) (a) –3 year statute of limitations– violates the equal protection clause of the Fourteenth Amendment by not providing an equal number of years to enforce a federal cause of action as the State of Georgia, which is 20 years.

The Fourteenth Amendment states:

> **..."No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."**

NRS 11.190 Periods of Limitations Prescribed.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

Georgia's 3-704 (4360) Statutory rights; ...

"All suits for the enforcement of rights accruing to individuals under statutes,...shall be brought within 20 years after the right of action shall have accrued."

In Graham v. Richardson, 403 U.S. 367; 91 S.Ct. 1848, 1853, (1971) Mr. Justice BLACKMUN cited Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 420; 68 S.Ct. 1128, 1143; 92 L.Ed. 1478 (1948):

"The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all person lawfully in this country shall abide 'in any state' on an equality of legal privileges with all citizens under non-discrimatory laws.

"All person within the jurisdiction of the United States shall have the same right in every state and Territory...to the full and equal benefit of all laws and proceedings for the security of persons and property as enjoyed by white citizens."

In International Union, United Automobile, Aerospace and Agricultural implement workers of America v. Hoosier Cardinal Corporation, 383 U.S. 696; 86 S.Ct. 1107, 1116; 16 L.Ed.2d 192; Mr. Justice WHITE, Mr. Justice DOUGLAS and Mr. Justice BRENNAN dissented:

..."Simple justice dictates in such a situation that the right of employees in different States to assert their federal claim should be equally available. Clearly there is no sense or justice in referring to 50 or more different statues of limitations so that one employee may be barred after one year while another employee may sue any time within six years."

CONCLUSION: Both the District Court and the Appellate Court enforced a WRONG statute.

Neither Court identified the statute they applied. They merely applied a "3 year statute."

There is NO 3 year statute on written contracts in Nevada.

NRS 11.190 (3) (a) should not be applied to 42 U.S.C. 1983 actions, becauese 1983 is a REMEDY not a RIGHT.

NRS 11.190 (3) (a)–3 year statute does not equal Georgia's 20 year statute of limitations and (if considered) should be declared either Constitutionally defective or invalid as applied because it does not provide the equal protection of laws as guaranteed by the Fourteenth Amendment.

THEREFORE: THIS ACTION IS, INDEED, TIMELY.

GOVERNMENTAL V. PRIVATE CONTRACTS

Applying NRS 11.190 (3)(a) (liability created by statute) creates an invideous discrimination and amounts to the denial of due process and equal protection of the law.

Failing to file in 3 years would bar the victims of governmental (public school teachers) breaches of contract while the victims of either private or parochial school breaches of contract would suffer no such bar. Such arbitrary treatment clearly violates the equal protection guaranteed by the United States Constitution.

If a 3 year statute of limitations is applied Petitioner would be penalized for exercising her right to bring an action under 1983 and forced to forego the right to a 6 year statute. CONCLUSION: Pursuant to the equal protection clause of the Fourteenth Amendment all teachers who are victims of a breach of contract should have 6 years to enforce their contract in Nevada.

THEREFORE: The 6 year statute of limitations on written contracts is the correct statute of limitations to apply.

DUE PROCESS

IMPARTIAL TRIBUNAL

As previously established: Petitioner's 8th valid written contract is a protected "property interest" to continued employmnet. Respondents arbitrarily, capriciously, and/or malicioulsy breached their contract when they removed Petitioner from the payroll at the end of the working day of January 6, 1972; whereas the contract was until 6-8-72.

Respondents violated all of Nevada's statutory provisions for dismissal of teachers (Appendix G. H): No cause; No admonition; and NO assistance PRIOR to suspension and dismissal.

Respondents' manner of termination (abrupt, secret, one-sided) left serious unanswered questions in the minds of fellow teachers and parents—negative conclusions provided the answers. The general belief is that "No one-but No one—gets fired from the Clark County School District"—unless they have done something so horrible that it's undisclosable. It is inconceivable that an exceptional teacher could be terminated for NO REASON WHATSOEVER. However, that is what happened in this

case.

Although, as seen in every point made, it was Respondents who violated every element of the Fundamental Rights to due Process–it has been Petitioner who has been stigmatized by the illegal abuse of authority.

It was Respondents who did not have a cause; did not have a reason; did not provide notice; did not provide a hearng before they "jerked Petitioner's contract out from under her"; did not disclose the names of the witnesses or the nature of their testimony; did not allow Petitioner to confront those witnesses or cross-examine them; did not state any evidence relied on; and prevented her from engaging an attorney to bring this matter to the attention of the Court. Yet, it is Petitioner who bears the burden, each day, who has paid the price for their illegal actions since 1972–9 long years.

The primary question is whether this Board constituted a fair and impartial tribunal as guaranteed by the Fourteenth Amendment of the Constitution's Due Process Clause when they sat as the final reviewing body 3½ months later.

This Court made a decision on a similar issue in Goldberg v. Kelly, 397 U.S. 254, 272; 90 S.Ct 1011; 25 L.Ed.2d 287 (1970) when Mr. Justice BRENNAN stated:

> ..."He should not, however, have participated in making the determination under review."

CONCLUSION: Pursuant to the above decision the School Board did not constitute a "fair and impartial" tribunal as required by Due Process at the "hearing" on April 20, 1972; NOR on the day they actually decided to remove Petitioner from the payroll at the end of the working day of January 6, 1972.
THEREFORE: Petitioner is entitled to be heard by a "fair and impartial" tribunal and to have her name cleared.

SUMMARY

Petitioner, a tenured teacher, had a valid signed written contract with the Clark County School District for 9-1-71 through 6-8-72. This Contract represents the "property interest" of continued employment protected by the Fourteenth Amendment of the United States Constitution.

Respondents breached this contract on January 6, 1972. To the best of Petitioner's knowledge this is the first time a teacher has been dismissed during the term of her contract in Clark County–except in a felony case.

Respondents abruptly without cause, without stating a reason, without notice and without a hearing removed Petitioner from the payroll (dismissed) on January 6, 1972.

The next day, the Superintendent suspended her without pay pursuant to NRS 391.314 for no cause, no stated reason, no notice and no hearing.

This manner of dismissal not only violates all of the elements of Due Process that this Court has vigorously protected; but this manner of dismissal also created a stigma, which has blackened Petitioner's good name and touched the lives of family, friends, parents, students and prospective attorneys. Petitioner was unable to secure employment in any private or parochial school in the Las Vegas area. One teacher who wrote a letter of recommendation for Petitioner was terminated on perjured testimony and falsified documents. Former teacher friends will not talk to her lest the same thing happen to them. Parents, who thought Petitioner unbelievably kind and dedicated because she tutored their children for FREE 1 hour each day, refused to bring their children back for continued FREE tutoring. It is as if Petitioner had leprosy and they were afraid of "catching it."

Petitioner built (on borrowed money) and established a parocial school so she could continue to work with young students.

Petitioner's ungrounded deprivation has continued for 9 long years and there is no end in sight.

It has been established that:

1. Petitioner's contract represents a Common Law RIGHT which has a 6 year statute of limitations in Nevada.

2. Petitioner brought this action under the Fourteenth Amendment which has No limitations. The federal Courts "borrow" the State's statute of limitations applicable to the RIGHT which was violated. Respondents violated Petitioner's

Right to continued employment for ensuing years.

3. 42 U.S.C. 1983 does not include any RIGHT. 1983 is a REMEDIAL statute applied to enforce federal RIGHTS: BOTH Common Law RIGHTS and those RIGHTS created by Statute.

4. NRS 11.190 (3) (a), a 3 year statute of limitations applicable to RIGHTS Created by Statute is not the applicable statute for this action for 3 reasons:

a. NRS 11.190 (3) (a), (liability created by statute) does not provide protection equal to Georgia's 20 year statue of of limitations on "liabilities created by statute."

b. Applying NRS 11.190 (3) (a) to a public teacher's contract action would invideously discriminate against public school teachers by not providing as long a period of enforcement as the state has provided for private and parochial school teachers who have been the victims of a breach of contract.

c. Petitioner would be penalized for filing in federal court; whereas it is her only available court.

5. Petitioner was prohibited by statuted from filing an action in Court until after she had presented a Notice of Claim to the District and it was denied or until January 23, 1973. This action was filed October 7, 1975 or before 3 years had expired.

CONCLUSION: This is Petitioner's LAST CHANCE to be heard by any Court.

The Nevada Supreme Court dismissed her State Court action sua sponte.

Respondents, acting under color of State law, violated all of Petitioner's known Constitutional Rights–Life, Liberty, Property, Due Process and Equal Protection.

THE LOWER COURTS APPLIED THE WRONG STATUTE.

Petititioner had a contract with Respondents to teacher 9-1-71 through 6-8-72, which they breached on April 26, 1972.

Petitioner was prohibited from filing suit until 1-23-73.

Petitioner filed the complaint on October 7-1975.

There is a 6 year statute of limitations for written contracts in Nevada.

Petitioner filed within BOTH the 3 and 6 year limits.

THE LONGER STATUTE APPLIES.

THEREFORE: THIS ACTION IS, INDEED, TIMELY.

FILED

UNITED STATES COURT OF APPEALS SEP 23 1980

FOR THE NINTH CIRCUIT

RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

ELVIS J. HAUSEN,

Plaintiff-Appellant,

v.

GLEN C. TAYLOR, et al.,

Defendants-Appellees.

No. 78-3526
DC# CV 75-180-RDF

ORDER

Before: GOODWIN, POOLE and FERGUSON, Circuit Judges

The panel as constituted in the above case has voted unanimously to deny the petition for a rehearing and reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion of en banc rehearing and no judge of the court has requested a vote on the suggestion of rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion of a rehearing en banc is rejected.

A

FILED

JUL 21 1980

RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELVA J. HAUGEN,

Plaintiff-Appellant,

v.

GLEN C. TAYLOR, et al.,

Defendants-Appellees.

No. 78-3526

MEMORANDUM

Appeal from the United States District Court
for the District of Nevada
Roger D. Foley, Chief Judge, presiding

Before: GOODWIN, POOLE and FERGUSON, Circuit Judges

Plaintiff's civil rights action, brought pursuant to 42 U.S.C. §§ 1983 and 1985, is barred by the State of Nevada three-year statute of limitations. Mason v. Schaub, 564 F.2d 308 (9th Cir. 1977).

Plaintiff's right of action accrued as of April 26, 1972, and the pendency of a notice of claim with the school district does not suspend the right to proceed in federal court under §§ 1983 and 1985. See Jackson v. Hayakawa, 605 F.2d 1121, 1127 (9th Cir. 1979).

The judgment is AFFIRMED.

ENTERED

JUN 29 1978

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
BY _____ DEPUTY

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BY _____
DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

* * *

ELVA J. HAUGEN,

Plaintiff,

v.

GLEN C. TAYLOR, et al.,

Defendants.

CIVIL-LV-7[illegible] 190, RDF

ORDER

After careful consideration of the pleadings filed herein, and particularly having reviewed the Motions to Dismiss, filed on October 23, 1975, October 28, 1975, November 4, 1975, and November 18, 1975, and all pleadings and orders related thereto, and having further reviewed the Report of the United States Magistrate, filed herein on May 12, 1978, it is

ORDERED:

1. The Report of the United States Magistrate and orders related thereto are approved.

2. The above action, commenced herein on October 7, 1975, is dismissed with prejudice.

DATED: 6/26/78

ROGER D. FOLEY
United States District Judge

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CLERK
BY
DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

* * *

ELVA J. HAUGEN,

Plaintiff,

v.

GLEN C. TAYLOR, et al.,

Defendants.

CIVIL-LV-75-180 RDT

REPORT OF UNITED STATES MAGISTRATE

Plaintiff filed a complaint on October 7, 1975, basing jurisdiction on Title 28 United States Code Sections 1343(4) and 2201, and Title 42 United States Code Sections 1983 and 1985, alleging that defendants conspired to violate her civil rights by conspiring to cause her dismissal from the Clark County School District.

Motions to Dismiss were filed on October 23, 1975, October 28, 1975, November 4, 1975, and November 18, 1975, on behalf of all the defendants in this action on the grounds that plaintiff's complaint was untimely, and on the further ground that plaintiff failed to allege facts to support a cause of action.

The complaint arises out of conduct alleged to have occurred on January 31 and February 1, 1972, April 20, 1972, and April 26, 1972. As noted above, this complaint was filed on October 7, 1975.

The three-year statute of limitations which applies to this action was neither tolled nor extended, and had expired prior to the commencement of this action.

Plaintiff has failed in her exhaustive pleadings to sufficiently support her theory that a longer statute of limitations should apply to her situation.

The United States Magistrate's rulings are clarified herein to reflect simply that plaintiff's cause of action is forever barred because the statute of limitations has run.

Dated this 12th day of May, 1978.

United States Magistrate

CLARK COUNTY SCHOOL DISTRICT

LAS VEGAS, NEVADA 89109

2832 EAST FLAMINGO ROAD - TELEPHONE 736-5011

BOARD OF SCHOOL TRUSTEES

Mr. Glen C. Taylor, President
Mrs. Helen C. Cannon, Vice President
Mr. John F. Anderson, Clerk
Dr. Clare W. Woodbury, Member
Mr. C. Donald Brown, Member
Mr. James C. Andres, Member
Mr. David Canter, Member

Dr. Kenny C. Guinn, Superintendent

REGISTERED MAIL
Return Receipt Requested

April 26, 1972

Mr. Richard H. Bryan, Attorney at Law
First National Bank Building - Suite 920
Las Vegas, Nevada 89101

RE: Elva J. Haugen - Dismissal

Dear Mr. Bryan:

As attorney for Elva J. Haugen, this letter is to notify you of the decision of the Board of School Trustees of the Clark County School District in the dismissal of your client as a teacher in the Clark County School District.

After reviewing the findings and recommendations of the Professional Review Panel as provided in NRS 391.31945, and having given you the opportunity to argue in behalf of your client on April 20, 1972 in regard to these findings, it is the decision of the Board that the findings and recommendations are substantial as to the charge of insubordination and are therefore affirmed by this Board.

This decision is based upon the evidence presented, the transcript of the Professional Review Panel Hearing, and the report and recommendations of the Review Panel.

Sincerely,

Glen C. Taylor, President
Board of School Trustees

GCT:gt

AN EQUAL OPPORTUNITY EMPLOYER

SUMMARY OF FINDINGS

BY

PROFESSIONAL REVIEW PANEL

February 2, 1972

Under N.R.S. 391.311 through 391.3197, the Professional Review Panel charged with investigating the CCSD'S case against Mrs. Elva Haugen submits this report.

I. SCOPE

A. On January 31, 1972, the Panel met in the administrative conference room of the CCSD at 8:00 a.m. Opening statements were heard from the CCSD represented by Attorney Robert Petroni from 8:30 a.m. to 9:00 a.m. and from Mrs. Haugen, represented by Mr. Vince Sanacore, from 9:00 a.m. to 9:30 a.m. Testimony and cross examination was heard by the Panel members from witnesses presented by both parties and from witnesses requested by the Panel. The Panel agreed to disregard all of the proceedings from June 1971 Professional Review Panel investigation while considering the current charges.

B. On February 1, 1972, the Panel met again at the CCSD offices and continued its investigation. Final testimony was heard on this date along with summaries presented by Robert Petroni for CCSD and by Vince Sanacore for Mrs. Elva Haugen.

C. On February 2, 1972, the Panel concluded its task with discussion, deliberation and the writing of this report.

II. FINDINGS

The Panel finds sufficient evidence to support the charge of Insubordination filed against Mrs. Haugen.

On the second charge of Neglect of Duty the Panel finds evidence to support the CCSD'S charge, but also has found extenuating evidence which would disallow this charge as reason for dismissal. The Panel believes that Mrs. Haugen communicated adequately enough to Mr. Jackson on January 7, 1972 when she stated, "Get me a substitute", that she would not be performing as a teacher that day. There is no question in our minds that she was emotionally distraught at that time. Mr. Jackson, the principal, apparently understood this communication when he immediately assigned Mr. Donohue to pick up Mrs. Haugen's class in the playground prior to the actual start of the school day. We find both Mrs. Haugen and Mr. Jackson negligent

in not pursuing their conversation further to determine the reason for the request for a substitute and to ascertain whether Mrs. Haugen was leaving immediately or was intending to await the arrival of a substitute.

The Panel additionally finds extreme conflict in the testimony of both Mr. Cecil Jackson and Mrs. Elva Haugen. In addition, we found Mrs. Haugen incapable of pursuing a sequential development of thought which may be explained by her extreme emotional distress at these proceedings.

We support the recommendation for dismissal.

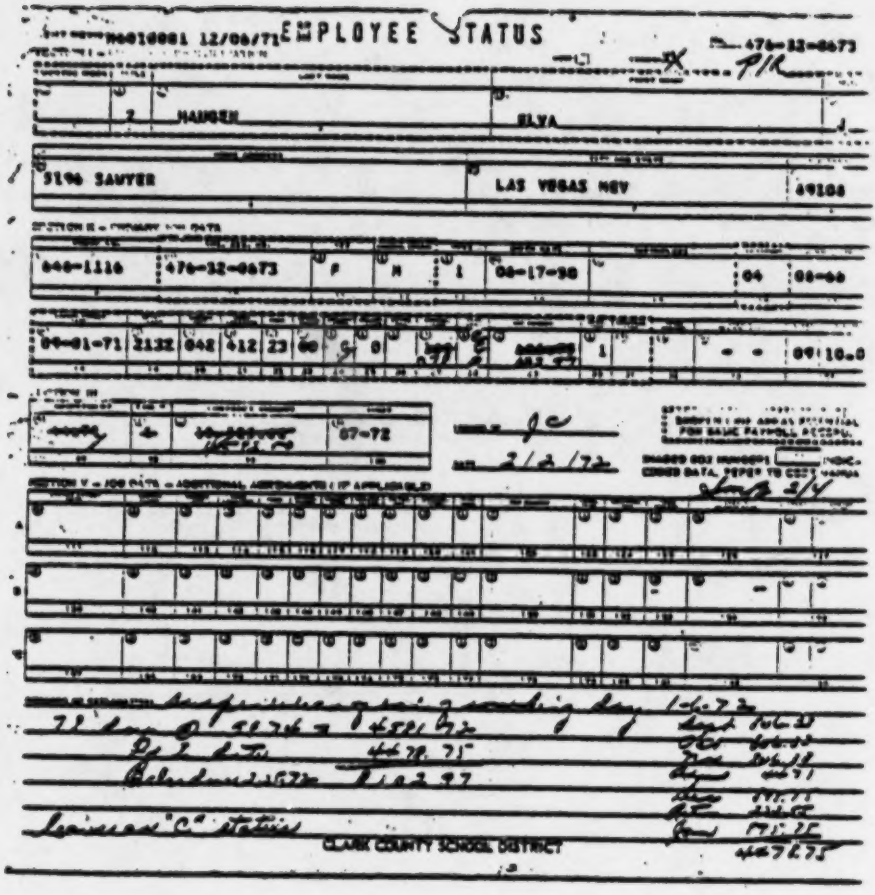
Dwaine Avery, Chairman

Mrs. Josephine Byrd

Gerald Connor

Don Estes

John D. Harrington


EMPLOYEE STATUS

2. "Board" means the board of trustees of the school district wherein a teacher affected by NRS 391.311 to 391.3196, inclusive, is employed.
3. "Superintendent" means the superintendent of a school district or the person acting as such.
4. "Teacher" means any certificated employee of a board of trustees of a school district who has been employed by such board of trustees on a permanent basis at the end of the probationary periods as provided in NRS 391.3197.
(Added to NRS by 1967, 968; A 1969, 271; 1971, 380)

391.3115 Provisions of NRS 391.311 to 391.3197 inapplicable to substitute or adult education teachers. The provisions of NRS 391.311 to 391.3197, inclusive, do not apply to substitute teachers or teachers employed for adult education.
(Added to NRS by 1971, 380)

391.312 Grounds for dismissal, refusal to reemploy teacher.
1. A teacher may be dismissed or not reemployed for the following reasons:
(a) Inefficiency;
(b) Immorality;
(c) Unprofessional conduct;
(d) Insubordination;
(e) Neglect of duty;
(f) Physical or mental incapacity;
(g) A justifiable decrease in the number of positions due to decreased enrollment or district reorganization;
(h) Conviction of a felony or of a crime involving moral turpitude;
(i) Inadequate performance;
(j) Evident unfitness for service;
(k) Failure to comply with such reasonable requirements as a board may prescribe;
(l) Failure to show normal improvement and evidence of professional training and growth;
(m) Advocating overthrow of the Government of the United States or of the State of Nevada by force, violence or other unlawful means, or the advocating or teaching of communism with the intent to indoctrinate pupils to subscribe to communistic philosophy;
(n) Any cause which constitutes grounds for the revocation of a teacher's state certificate;
(o) Willful neglect or failure to observe and carry out the requirements of this Title; or
(p) Dishonesty.
2. In determining whether the professional performance of a teacher is inadequate, consideration shall be given to the regular and special

evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the board.
(Added to NRS by 1967, 968)

391.313 Admonition of teacher: Duty of principal, administrator. Whenever a principal or other school administrator charged with supervision of a teacher finds it necessary to admonish a teacher for a reason that he believes may lead to dismissal or cause the teacher not to be reemployed, he shall:

1. Bring the matter to the attention of the teacher involved and make a reasonable effort to assist the teacher to correct whatever appears to be the cause for potential dismissal or failure to reemploy; and
2. Except as provided in NRS 391.314, allow reasonable time for improvement, which shall not exceed 3 months.

(Added to NRS by 1967, 968; A 1969, 853)

391.314 Suspension of teacher without notice, hearing by superintendent of school district.

1. Whenever a superintendent has reason to believe that cause exists for the dismissal of a teacher and when he is of the opinion that the immediate suspension of the teacher is necessary in the best interests of the children in the district, the superintendent may suspend the teacher without notice and without a hearing. Notwithstanding the provisions of NRS 391.312, a superintendent shall automatically suspend a teacher that has been officially charged but not yet convicted of a felony or a crime involving moral turpitude. If the charge is dismissed or if the teacher is found not guilty, he shall be reinstated with back pay and normal seniority. The superintendent shall notify the teacher in writing of the suspension.
2. Within 10 days after such suspension becomes effective, the superintendent shall begin proceedings pursuant to the provisions of NRS 391.312 to 391.3196, inclusive, to effect the teacher's dismissal.
3. If sufficient grounds for dismissal do not exist, the teacher shall be reinstated without loss of compensation.

(Added to NRS by 1967, 969; A 1971, 380)

391.315 Recommendations for dismissal, against reemployment.

1. A superintendent may, or at the direction of the board shall, recommend that a teacher be dismissed or not reemployed.
2. The board may recommend that a superintendent be dismissed or not reemployed.

(Added to NRS by 1967, 969)

391.316 Professional review committee: Creation; number; qualifications; appointment; terms.

1. There is hereby created a professional review committee which shall consist of not less than 42 persons of recognized scholarship and

391.31945 Review of panel recommendations by board; rehearing.

1. The superintendent or teacher may request the board to review the recommendations of the panel rendered pursuant to NRS 391.3193.

2. Such review shall be limited to the findings and recommendations of the panel if, in the opinion of the board, the record is substantial.

3. If the board finds the record unsubstantial it shall rerefer the matter to the panel of the professional review committee to take further evidence and testimony.

4. If the board deems it appropriate, it may order a hearing de novo upon appeal by a superintendent or teacher, in part or whole, concerning the dismissal or reemployment of such teacher.

(Added to NRS by 1971, 380)

391.3195 Hearing procedures for board of trustees; written decision.

1. The following provisions apply to any hearing conducted by the board pursuant to NRS 391.3194:

(a) The board shall permit all relevant evidence to be presented, including the report of the review panel.

(b) The board may require witnesses to give testimony under oath and produce evidence.

(c) The state board of education shall develop a set of uniform standards and procedures to be used in such hearing. The technical rules of evidence need not apply.

(d) The teacher and superintendent may be represented by counsel.

(e) At the conclusion of the hearing the board shall, within 5 days, render a written decision based on the evidence. A copy of the decision shall be given to the teacher and superintendent.

2. If it is the decision of the board to adopt the recommendation of the superintendent, the board may, by resolution, dismiss or not reemploy the teacher.

(Added to NRS by 1967, 971)

391.31955 Action by board of trustees on vote of majority of quorum present. For the purposes of NRS 391.311 to 391.3197, inclusive, the board may act on an affirmative vote of a majority of a quorum present, notwithstanding the provisions of NRS 386.330, as long as the quorum members voting are the same members of the board who heard the accusations, presentation of facts and recommendations relating to the dismissal or reemployment of a teacher.

(Added to NRS by 1971, 379)

391.3196 Reemployment of teachers: Procedure.

1. On or before April 1 of each year, the boards of trustees of the several school districts shall notify, in writing, the teachers in their employ concerning their reemployment for the ensuing year. If the board, or the person designated by it, fails to notify a teacher who has been employed by a school district for a majority of the current year of his status for the

This Writ of Certiorari is RESPECTFULLY SUBMITTED,

Elva J. Haugen

ELVA J. HAUGEN
1841 N. Decatur
Las Vegas, Nevada
89108

I received ~~3~~ 2 copy of the Writ of Certiorari on December 19, 1980.

KEITH EDWARDS
116 S. 4th Street
Las Vegas, Nevada 89101

1-6-81

80-1159

No. A-323

MAR 14 1981

In the Supreme Court of the United States

October Term, 1980

ELVA J. HAUGEN,
Petitioner,

vs.

GLEN C. TAYLOR, HELEN C. CANNON, C. DONALD BROWN, JAMES C. ANDRUS, JOHN F. ANDERSON, CLARE W. WOODBURY, and DAVID CANTER, INDIVIDUALLY and as members of the BOARD OF SCHOOL TRUSTEES of the CLARK COUNTY SCHOOL DISTRICT; and KENNY C. GUINN, INDIVIDUALLY and as SUPERINTENDENT of the CLARK COUNTY SCHOOL DISTRICT; RICHARD F. BROWN, Associate Superintendent, Personnel Division; CHARLES SILVESTRE, Assistant Personnel Manager; JOHN T. PAUL, Associate Superintendent; THERON SWAINSTON, Assistant Superintendent, Elementary Education; CECIL R. JACKSON, Principal E. W. Griffith Elementary School; and KENNETH MARSHALL, Principal, Lois Craig Elementary School, INDIVIDUALLY and as employees of CLARK COUNTY SCHOOL DISTRICT; DWAINE AVERY, JOSEPHINE C. BYRD, GERALD CONNERS, DON L. ESTES, and JOHN D. HARRINGTON, INDIVIDUALLY and as members of the PROFESSIONAL REVIEW PANEL and employees of the CLARK COUNTY SCHOOL DISTRICT,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENTS

KEITH R. EDWARDS
(Counsel of Record)
EDWARDS, HUNT, PEARSON
& HALE, LTD.
116 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Respondents

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

QUESTION PRESENTED

The only question presented on this Petition for Certiorari is which statute of limitations applies in Nevada for the purposes of barring a claim brought under 42 U.S.C. §§1983 and 1985.

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No. A-323

In the Supreme Court of the United States

October Term, 1980

ELVA J. HAUGEN,
Petitioner,

vs.

GLEN C. TAYLOR, HELEN C. CANNON, C. DONALD BROWN, JAMES C. ANDRUS, JOHN F. ANDERSON, CLARE W. WOODBURY, and DAVID CANTER, INDIVIDUALLY and as members of the BOARD OF SCHOOL TRUSTEES of the CLARK COUNTY SCHOOL DISTRICT; and KENNY C. GUINN, INDIVIDUALLY and as SUPERINTENDENT of the CLARK COUNTY SCHOOL DISTRICT; RICHARD F. BROWN, Associate Superintendent, Personnel Division; CHARLES SILVESTRE, Assistant Personnel Manager; JOHN T. PAUL, Associate Superintendent; THERON SWAINSTON, Assistant Superintendent, Elementary Education; CECIL R. JACKSON, Principal E. W. Griffith Elementary School; and KENNETH MARSHALL, Principal, Lois Craig Elementary School, INDIVIDUALLY and as employees of CLARK COUNTY SCHOOL DISTRICT; DWAINE AVERY, JOSEPHINE C. BYRD, GERALD CONNERS, DON L. ESTES, and JOHN D. HARRINGTON, INDIVIDUALLY and as members of the PROFESSIONAL REVIEW PANEL and employees of the CLARK COUNTY SCHOOL DISTRICT,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENTS

OPINION BELOW

There has been no opinion rendered by the Court of Appeals for the Ninth Circuit or by the United States District Court for the District of Nevada. Petitioner's Complaint was dismissed below with prejudice in the United States District Court for the District of Nevada, CV-LV-75-180, RDF, on June 26, 1978. On appeal to the United States Court of Appeals for the 9th Circuit, the Court issued a memorandum decision affirming the judgment of the court below, No. 78-3526, on July 21, 1980.

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals for the Ninth Circuit, Number 78-3526, was filed and entered on July 21, 1980. A Petition for Rehearing and Suggestion for Rehearing En Banc was denied on September 23, 1980. A Petition for Writ of Certiorari was filed through the mails by Petitioner and received by Respondents on January 6, 1981. The jurisdiction of this Court rests on 28 U.S.C. §1254(1).

CONSTUTUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The constitutional provisions, statutes and regulations which are relevant to the determination of this case are as follows: 42 U.S.C. §1983; 42 U.S.C. §1985; Nevada Revised Statutes (As amended 1965, 1967; Reissue: 1979) §§11.190 (1) (b); 11.190 (3) (a).

STATEMENT OF THE CASE

Plaintiff-petitioner brought a suit under 42 U.S.C. §1983 and 42 U.S.C. §1985 in the United States District Court, District of Nevada, alleging a violation of her civil rights and the existence of a conspiracy regarding her termination as a school teacher by the Clark County School District. Defendants-respondents are members of the Board of School Trustees of the Clark County School District and various administrative personnel in the Clark County School District whom Plaintiff-petitioner alleges took part in the proceedings by which she was dismissed from her position.

In its Order of June 26, 1978, the United States District Court for the District of Nevada approved the report of the United States Magistrate and the orders related thereto and dismissed the Plaintiff's Complaint with prejudice. CV-LV-75-180, RDF. The report of the United States Magistrate, a copy of which is provided on page D of the Appendix in the Petition for Certiorari, specified that Plaintiff filed her Complaint on October 7, 1975 and alleged that Defendants conspired to violate her civil rights by conspiring to cause her dismissal from the Clark County School District. The action was brought pursuant to 42 U.S.C. §§1983 and 1985. Defendants filed Motions to Dismiss on the grounds that Plaintiff's Complaint was untimely and that it failed to allege facts to support a cause of action. The conduct complained of took place on January 31, February 1, April 20, and April 26 of 1972. The report then stated that the three-year statute of limitations was applicable to that action and had neither been tolled nor extended and had expired prior to the commencement of the Plaintiff's action. The Magistrate concluded that the Plaintiff's cause of action was forever barred because of the fact that the statute of limitations had run.

On appeal to the United States Court of Appeals, Ninth Circuit, No. 78-3526, the Court affirmed the judgment of the United States District Court in their memorandum decision and held that the Plaintiff's civil rights action, brought pursuant to 42 U.S.C. §§1983 and 1985, was barred by the State of Nevada's three-year statute of limitations.

The only facts relevant to the disposition of this matter are as follows: As of January 7, 1972, Petitioner was notified that she was suspended without pay. On January 31 and February 1, 1972, hearings were held before the professional review panel of the Clark County School District. This board supported the recommendations for dismissal of Petitioner from her position in the school district. After another hearing on April 20, 1972, Petitioner received the official decision of the Clark County School District on April 26, 1972 when Glen C. Taylor, president of the Board of Trustees, informed Petitioner's attorney by registered mail that Petitioner had been officially dismissed as a teacher in the Clark County School District. It is undisputed that the Petitioner did not file her Complaint in Federal District Court until October 7, 1975, more than three years after the alleged improper conduct.

ARGUMENT

I. The Petition for Certiorari Should Be Denied Because Petitioner Has Failed to Comply, Both Procedurally and Substantively, With the Rules of the Supreme Court of the United States.

Upon examination of the Petitioner's Brief, it becomes obvious that several defects exist which provide ample justification for this Court to deny the Petition. The grounds for denial are not only based upon the statute of

limitations issue, but also upon the basic grounds for obtaining a writ of certiorari as contained in the Supreme Court Rules.

Under Supreme Court Rule 17, "a review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor." The rule then enumerates various reasons for conducting a review of a lower court decision:

". . .

> (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

It is quite obvious that Petitioner's case does not fit into any of the categories enumerated in Rule 17 (1) (b). The United States Court of Appeals for the Ninth Circuit has already rendered a decision on the issues presented in this case in *Mason v. Schaub,* 564 F.2d 308 (9th Cir. 1977), wherein it was held that the three-year statute of limitations is applicable to actions brought under 42 U.S.C. §1983 in the State of Nevada. No other court of appeals had rendered a decision in conflict with that of *Mason v. Schaub,*

supra, relating to the applicable period of limitation in Nevada. Nor did the Ninth Circuit decide an important state or territorial question in conflict with applicable state or territorial law. Nor has the Court of Appeals decided an important question of federal law which has not been decided by the United States Supreme Court. It has universally been held that since Congress did not provide a statute of limitations governing actions brought under 42 U.S.C. §1983, federal courts would look to the state statute of limitations applicable to the most analogous state action. See, e.g., *Spiegel v. School District Number 1, Laramie County, Wyoming,* 600 F.2d 264 (10th Cir. 1979); *Carmicle v. Weddle,* 555 F.2d 554 (6th Cir. 1977). The Ninth Circuit has not decided a federal question in a way in conflict with the applicable decisions of this Court and has not so far departed from accepted and the usual course of proceedings as to call for an exercise of this Court's power of supervision as is demonstrated by the decisions of other circuits set forth below.

Many other procedural defects under Supreme Court Rule 21 exist in the Petition for Certiorari, but the most glaring infirmity in Petitioner's Brief is her flagrant violation of Paragraph 4 of Supreme Court Rule 21 which provides:

> "The failure of a Petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his Petition."

Petitioner has chosen to include a great deal of irrelevant matter in her Petition and has likewise failed to present a clear picture of the legal issues involved. Petitioner has included arguments in her Brief which were not decided

upon in the Ninth Circuit or in the United States District Court for the District of Nevada. For the reasons stated above, Respondents contend that Petitioner's Brief is substantially deficient under the Rules of the Supreme Court of the United States and such Petition should therefore be denied.

II. The Three Year Statute of Limitations in Nevada, N.R.S. 11.190 (3)(a), Limiting Actions Upon Liabilities Created by Statute, Is Applicable to Actions Brought Pursuant to 42 U.S.C. §§1983 and 1985.

Petitioner claims that the six-year statute of limitations, N.R.S. 11.190 (1)(b), which governs actions upon a contract, obligation or liability founded upon an instrument in writing, applies to her action brought pursuant to 42 U.S.C. §§1983 and 1985 and that therefore, she is not barred from bringing those claims. Petitioner's position is clearly erroneous and contrary to existing case law. N.R.S. 11.190 (3)(a) and N.R.S. 11.190 (1)(b) provide:

"1. Within 6 years:

* * *

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

* * *

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture."

Directly on point is *Mason v. Schaub,* 564 F.2d 308 (9th Cir. 1977). Mason brought an action under 42 U.S.C.

§1983 which was dismissed by the United States District Court for the District of Nevada because it was barred by the Nevada statute of limitations. Mason alleged that the Defendants had arrested him without a warrant or probable cause, failed to take him before a magistrate, filed charges without cause and for unwarranted delay. He further alleged that other civilian defendants assisted, instigated and directed the arrest. These actions form the basis for Mason's claim that he was denied his constitutional rights in violation of the Civil Rights Act.

Mason filed his complaint two years and one day after the alleged incident. In its Per Curiam opinion, the United States Court of Appeals for the Ninth Circuit stated:

> "Title 42, Civil Rights Act, contains no statute of limitations. The Federal Courts look to the state where the incident occurred for the appropriate statute of limitations. *Strung v. Anderson,* 452 F.2d 632 (9th Cir. 1971); *Mulligan v. Schlachter,* 389 F.2d 231 (6th Cir. 1968); *Smith v. Cremins,* 308 F.2d 187 (9th Cir. 1962);
>
> In *Smith v. Cremins, supra,* we found that Cal. Civ. Proc. Code §338(1), which established a limitations period of three years for actions based upon a liability created by statute, was applicable to actions brought under the Civil Rights Act:
>
> > '§1983 of the Civil Rights Act clearly creates rights and imposes obligations different from any which would exist at common law in the absence of statute.'
>
> 309 F.2d at 190, we apply the longer remedial statute even though a common law action on the same circumstances might be possible. In Montana, which utilized the same language in its limitation statute

as does California, the period established in cases based 'upon a liability created by statute' was again deemed controlling. *Strung v. Anderson,* 452 F.2d at 632; *Shouse v. Pierce County,* 559 F.2d 1142 (9th Cir. 1977).

Nevada utilizes the same language in its statutes as does California. (Footnote omitted). The Nevada Supreme Court has acknowledged that the Nevada statutes were taken from the California code. *Hartford Insurance Group v. Statewide Appliances, Inc.,* 87 Nev. 195, 484 P.2d 569 (1971).

Because 42 U.S.C. §1983 creates a statutory liability, we hold that the three-year limitation of action provided under N.R.S. 11.190 (3)(a) is applicable to actions brought in the Federal Courts in Nevada under 42 U.S.C. §1983."

Petitioner has completely ignored the *Mason v. Schaub* case in her Brief. She stands committed to the argument that the six-year statute of limitations for written contracts is applicable to her case and yet she does not cite any authorities supportive of that position. (See Brief of Petitioner, pp. 11-12). It is quite clear that *Mason v. Schaub, supra* is dispositive of the statute of limitations question presented herein and that on that ground, the Petition for Certiorari should be refused.

Each point made by the Ninth Circuit Court of Appeals in the *Mason* decision has been amply supported by decisions from other jurisdictions. It is quite clear that reference must be made to the limitations periods prescribed by the state in which the litigation arose, since Title 42 of the Civil Rights Act contains no statute of limitations. *Spiegel v. School District Number 1, Laramie County, Wyo., supra; Green v. Ten Eyck,* 572 F.2d 1233

(8th Cir. 1978); *Prince v. Wallace,* 568 F.2d 1176 (5th Cir. 1978); *Carmicle v. Weddle, supra; Polite v. Diehl,* 507 F.2d 119 (3rd Cir. 1974); *Allah v. Commissioner of Department of Correctional Services,* 448 F. Supp. 1123 (D.C.N.Y. 1978); *Walden III, Inc. v. State of Rhode Island,* 442 F. Supp. 1168 (D.R.I. 1977), *affd.,* 576 F.2d 945 (1st Cir. 1977).

In *Nevels v. Wilson,* 423 F.2d 691 (5th Cir. 1970), the court stated:

> "The dismissal was correct as to the civil rights aspect of the complaint. There is no federal statute of limitations for claims brought under 42 U.S.C.A. §§1983 and 1985. Thus, the applicable Florida statute is to be borrowed. [citations omitted]
>
> . . . Florida Statute 95.11(5)(a), F.S.A. provides that actions for liabilities created by statute must be commenced within three years after the accrual of the cause of action. We find that statute to be controlling as to the civil rights claim . . ."

Accord, *Johnson v. Railway Express Agency, Inc.,* 421 U.S. 454 (1975); *Hill v. Trustees of Indiana University,* 537 F.2d 248 (7th Cir 1976); *Romer v. Leary,* 425 F.2d 186 (2d Cir. 1970) (action for reinstatement and back pay); *Jones v. Jones,* 410 F.2d 365 (7th Cir. 1969), *cert. denied,* 396 U.S. 1013 (1970); *Henig v. Odorioso,* 385 F.2d 491 (3rd Cir. 1967), *cert. denied,* 390 U.S. 1016 (1968), *rehearing denied,* 391 U.S. 929 (1968); *Swan v. Board of Higher Education,* 319 F.2d 56 (2d Cir. 1963); *Smith v. Cremins,* 308 F.2d 187 (9th Cir. 1962); and *Lavender-Cabellero v. Dept. of Consumer Affairs, Etc.,* 458 F. Supp 213 (S.D.N.Y. 1978).

The decisions finding that the three-year statute of limitations governing liability created by statute applicable to actions brought under 42 U.S.C. §1983 are quite instructive. The most notable of these decisions is *Smith v.*

Cremins, 308 F.2d 187 (9th Cir. 1962). In deciding which statute of limitations was applicable to actions brought under the Civil Rights Act, the Court engaged in the following discussion:

> "There are no decisions directly in point, and those most nearly analogous are inconclusive. The Court of Appeals for the Second Circuit, without discussion, has applied the New York 'liability created by statute' limitation to an action under the Civil Rights Act, and the Court of Appeals for the Seventh Circuit has indicated that it would have applied that limitation to such action, had one been available in the statutes of Illinois. The Tenth Circuit, on the other hand, has applied the Kansas statute of limitations applicable to actions 'for injury to the rights of another, not arising on contract.'
>
> In determining which period of limitation to apply to an action under a particular federal statute, the Federal Court accepts the state's interpretation of its own statutes of limitations, but determines for itself the nature of the right conferred by the Federal statute.
>
> The California courts have held that an action is based 'upon a liability created by statute', within the meaning of §338 (1), if the liability would not exist but for statute. Or, conversely, an action is not based 'upon a liability created by statute' if the right is one which would have existed at common law in the absence of statute. Though broadly stated the distinction drawn is sufficiently discriminating for the present case.
>
> §1983 of the Civil Rights Act clearly creates rights and imposes obligations different from any which would exist at common law in the absence of statute.

A given state of facts may of course give rise to a cause of action in common law tort as well as to a cause of action under §1983 but the elements of the two are not the same. The elements of an action under §1983 are (1) denial under color of state law; (2) of a right secured by the Constitution and Laws of the United States. Neither of these elements would be required to make out a cause of action in common law tort; both might be present without creating common law tort liability. As Mr. Justice Harlan recently suggested:

> '. . . a deprivation of a constitutional right is significantly different from and more serious than a violation of a state right and therefore deserves a different remedy even though the same act may constitute both a state tort and the deprivation of a constitutional right.' [Citing *Monroe v. Pape*, 365 U.S. 194 (1961)].

Practical considerations also support the selection of California's 'liability created by statute' limitation. According to Appellee's analysis, the single cause of action under the Civil Rights Act alleged in the complaint includes three distinct causes of action under state law and calls for an application of two distinct state statutes of limitations; appellant suggests still another possibility. Inconsistency and confusion would result if the single cause of action created by Congress were fragmented in accordance with analogies drawn to rights created by state law in several differing periods of limitation applicable to each state created right where applied to the single federal cause of action."

As was clearly set forth above, 42 U.S.C. §1983 creates a cause of action for violation of a federally created right

by state officers acting under color of state law. *Rose Chalet Functions Corp. v. Evans,* 264 F. Supp. 790 (D. Mass. 1967). The statute was designed to provide a federal remedy where state law was either lacking or inadequate. *McNeese v. Board of Education For Community Unit School District 187, Cahokia, Illinois,* 373 U.S. 668 (1963); See also, *Madison v. Wood,* 410 F.2d 564 (6th Cir. 1969).

Petitioner's rights did not exist at common law. She, in fact, is seeking redress against a political subdivision which historically came within the umbrella of sovereign immunity. That doctrine has been greatly modified over the years by statute and has been made specifically subservient to the protections of the Fourteenth Amendment by federal acts and state statutes.

Mrs. Haugen's position is identical to the position of the Plaintiff in *Berry v. Arthur,* 474 F. Supp. 427 (D.S.D. 1979). Berry, a university professor, alleged that he was deprived of his civil rights by university officials in respect to promotions and salary increases. After mentioning that the federal court will apply the statute of limitations which would be most applicable had the action been brought in a state court, it was held:

> "Federal courts have applied a wide range of limitation provisions to civil right actions. The lack of uniformity is due to the variety in state statute of limitation provisions, differing facts of the particular cases, and to different legal approaches in finding the most appropriate state statute.
>
> The Court in this case finds the most analogous state limitation to be S.D.C.L. 15-2-13(2). This provision provides a six-year period for 'an action upon a liability created by statute other than a penalty or forfeiture; excepting those mentioned in subdivisions

> (4) and (5) of 15-2-15.' The Plaintiff's action exists by virtue of §1983. *That statute is the sole source of his right of action. It is accordingly proper to apply the limitation fixed for actions based upon a 'liability created by statute' to actions such as the Plaintiff has brought in §1983 in South Dakota. Similar state limitation statutes have been 'repeatedly borrowed' by federal courts in civil rights cases.* [emphasis added]. *Shouse v. Pierce County,* 559 F.2d 1142 (9th Cir. 1977); *Clark v. Mann,* 562 F.2d 1104 (8th Cir. 1977); *Chambers v. Omaha Public School District,* 536 F.2d 222 (8th Cir. 1976); *Reed v. Hutto,* 486 F.2d 534 (8th Cir. 1973)."

Based upon the policies enumerated in the above cited cases and the holding in the *Mason v. Schaub* case, *supra,* the conclusion is inescapable that in Nevada, actions brought under 42 U.S.C. §1983 are governed by the three-year statute of limitations regarding liability imposed or created by statute. Since Petitioner filed her action more than three years after it accrued, she is barred from obtaining the remedy she seeks under the Civil Rights Act.

In addition to finding that Petitioner's claims under 42 U.S.C. §1983 and §1985 were time-barred by the Nevada Statute of Limitations, the United States Court of Appeals for the Ninth Circuit also found that the pendency of a notice of claim with the school district did not suspend the right to proceed in federal court under §1983 and §1985. Petitioner has still chosen to argue the claims statute question in her Brief but has failed to cite any relevant authority which would create a conflict with *Jackson v. Hayakawa,* 605 F.2d 1121 (9th Cir. 1979), where the court stated:

> "Plaintiffs cite no federal cases which would support a finding that the statute was tolled in the present case.

> The Supreme Court held that the filing of a Title VII employment discrimination charge with the Equal Employment Opportunity Commission did not toll the limitations period for the filing of a §1981 action based on the same facts. [Citation omitted] In *Bireline v. Seagondollar,* 567 F.2d 260 (4th Cir. 1977), Pet. for Cert. filed, 48 U.S.L.W. 3047 (1979) [cert. denied, 100 S. Ct. 83 (1980)], the Fourth Circuit, apparently applying federal law, refused to toll the statute of limitations in an almost identical factual situation. After being notified that she would not be rehired, a university instructor personally pursued her administrative remedies in *Bireline.* She was denied relief and then brought the §1983 action, which was found time-barred despite the administrative proceedings.
>
> If any claim supports the use of the statute of limitations, the present one does. The Plaintiffs initially slept on any rights they had until after the three-year statute of limitations had run. . . .
>
> . . . As the Supreme Court has observed:
>
> 'Although any statute of limitations is necessarily arbitrary, the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interest in prohibiting the prosecution of stale ones.'
>
> [Citing, *Johnson v. Railway Express Agency, Inc.,* 421 U.S. 454 (1975)]. We believe that any 'merit' to the Plaintiff's claim is sufficiently outweighed by the competing policy interest of protecting defendants from stale claims."

In a footnote, the 9th Circuit in *Jackson* referred to the reasoning in the *Bireline* case as follows:

"The Court reasoned as follows:

> 'While Plaintiff was granted an administrative hearing after May 19, 1970, and it may have been appropriate for her to have delayed filing her Complaint until after its conclusion, the pendency of the administrative reconsideration did not extinguish her legal right to proceed in court or suspend it. The fact that she was unsuccessful in the administrative reconsideration did not create a new cause of action; it only made it apparent that if she were to obtain relief, it could only come as a result of a successful lawsuit commenced within three years following May 19, 1970.'

Bireline, supra, 567 F.2d at 263."

It is quite clear that Petitioner's Notice of Claim filed in October of 1972 did not toll the running of the statute of limitations applicable to the action to be brought under 42 U.S.C. §1983. Therefore, Petitioner's argument is not well taken.

Petitioner's cause of action accrued from the date of her official termination of April 26, 1972. In *Jackson v. Alcan Sheet and Plate,* 462 F. Supp. 82 (N.D.N.Y. 1978), the court held:

> "Plaintiff has also asserted a cause of action under 42 U.S.C. §1983. It is well established that New York C.P.L.R. §214(2) governs actions brought in Federal District Court in New York under §1983. [citations omitted]. New York C.P.L.R. §214(2) establishes a three-year limitation period for a liability based on statute . . . the three year period must be measured from Plaintiff's job termination on February 21, 1975. Consequently, it is this Court's determination that

> Plaintiff's suit is equally untimely for purposes of this action under 42 U.S.C. §1983."

Accord, *Leigh v. McGuire*, 468 F. Supp. 1163 (S.D.N.Y. 1979) (dismissal of officers from police department).

Petitioner has gone on in her Brief to make several other lengthy arguments involving strained constructions of various provisions of the Nevada Revised Statutes and misconstructions of cases dealing with statutes of limitations.

Petitioner has also seen fit to describe to this Court numerous "extenuating circumstances" which allegedly support her position that she has not slept on her rights. Petitioner's charges and innuendoes are insufficient to render inoperative the statute of limitations. In *Kissinger v. Foti*, 544 F.2d 1257 (5th Cir. 1977), the court stated:

> "Plaintiff's arguments that he is a 'layman-at-law', a pauper without legal assistance, imprisoned, and has continuously sought administrative relief from various state and federal agencies afford him no defense to the absolute bar of the statute of limitations. The district court properly dismissed Plaintiff's complaint."

While Petitioner no doubt feels that her personal problems are of a far greater magnitude than those of Mr. Kissinger who claimed he had been beaten while incarcerated in a Louisiana jail, her problems do not warrant the carving out of an exception from the well established rule that an action is barred by the expiration of the time set forth in the applicable statute of limitations.

The only real issue here is whether or not the three-year statute of limitations governing liability created by statute, NRS 11.190 (3) (a), applies in Nevada to actions brought under 42 U.S.C. §§1983 and 1985. The *Mason v. Schaub, supra,* case and the *Smith v. Cremins, supra,* case

are dispositive of this question. Other circuits have also found that the applicable statute of limitations to a 42 U.S.C. §1983 action is the limitation governing liabilities created by statute. See, e.g., *Swan v. Board of Higher Education,* 319 F.2d 56 (2d Cir. 1963); *Myer v. Frank,* 550 F.2d 726 (2d Cir. 1977), *cert. denied,* 434 U.S. 830; *Cox v. Stanton,* 529 F.2d 47 (4th Cir. 1975); *McGuire v. Baker,* 421 F.2d 895 (5th Cir. 1970), *cert. denied,* 400 U.S. 820; *Garner v. Stephens,* 460 F.2d 1144 (6th Cir. 1972); *Glasscoe v. Howell,* 431 F.2d 863 (8th Cir. 1970).

CONCLUSION

For the foregoing reasons, Respondents request that the Court deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

EDWARDS, HUNT, PEARSON
& HALE, LTD.

By KEITH R. EDWARDS

NO. 80-1153

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

MAR 31 1981
ALEXANDER L. STEVAS, CLERK

ELVA J. HAUGEN
Petitioner
vs.

GLEN C. TAYLOR, HELEN C. CANNON, C. DONALD BROWN, JAMES C. ANDRUS, JOHN F. ANDERSON, CLARE W. WOODBURY, and DAVID CANTER, INDIVIDUALLY and as member of the BOARD OF SCHOOL TRUSTEES of the CLARK COUNTY SCHOOL DISTRICT;

and KENNY C. GUINN, INDIVIDUALLY and as SUPERINTENDENT of the CLARK COUNTY SCHOOL DISTRICT; RICHARD F. BROWN, Associate Superintendent, Personnel Division; CHARLES SILVESTRE, Assistant Personnel Manager; JOHN T. PAUL, Associate Superintendent; THERON SWAINSTON, Assistant Superintendent, Elementary Education; CECIL R. JACKSON, Principal, E. W. Griffith Elementary School; and KENNETH MARSHALL, Principal, Lois Craig Elementary School, INDIVIDUALLY and as employees of CLARK COUNTY SCHOOL DISTRICT;

DWAINE AVERY, JOSEPHINE C. BYRD, GERALD CONNERS, DON L. ESTES, and JOHN D. HARRINGTON, INDIVIDUALLY and as members of the PROFESSIONAL REVIEW PANEL and employees of the CLARK COUNTY SCHOOL DISTRICT.

Respondents

PETITIONER'S REPLY BRIEF

ELVA J. HAUGEN
1841 N. Decatur
Las Vegas, Nevada 89108
702–648–1116
Proper Person

This Writ of Certiorari is RESPECTFULLY SUBMITTED,

Elva J. Haugen

ELVA J. HAUGEN
1841 N. Decatur
Las Vegas, Nevada
89108

I received a copy of the Writ of Certiorari on December 19, 1980.

Keith R. Edwards 1/64

KEITH EDWARDS
116 S. 4th Street
Las Vegas, Nevada 89101

P24 56456666

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO CLERK OF THE U.S. Supreme Court
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POSTAGE	$ 16 82
CERTIFIED FEE	75
SPECIAL DELIVERY	
RESTRICTED DELIVERY	
SHOW TO WHOM AND DATE DELIVERED	
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY	
SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	
RETURN RECEIPT SERVICE	
OPTIONAL SERVICES	
CONSULT POSTMASTER FOR FEES	
TOTAL POSTAGE AND FEES	$ 17 57
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PS Form 3800, Apr. 1976

PREFACE–JURISDICTIONAL STATEMENT

Petitioner hand-delivered a copy of the Petition to Respondents on 12-19-80. Respondents and Petitioner agree that the Petitioner's Petition was timely docketed on 12-22-80. Petitioner asked the Clerk's office to return the copies so she could reverse the numerals on pages 2 & 3 and correct the cover. Copies of the corrected version were hand-delivered to Respondents. Respondents mention no hardship placed on them by this correction.

Respondents had 30 days or until 1-16-81 to submit their brief–pursuant to Rule 22.1. Respondents' brief was not filed on or before this date. There is no record of any request or the granting of any request of an extension of time by the Clerk–pursuant to Rule 29.4–to 2-3-81.

On 1-30-81 Respondents untimely requested an extension of 60 days.

On 2-2-81 Petitioner objected to both the Clerk's office by phone and by certified letter addressed to the Court because the Brief was due on 1-16-81 and the request was untimely. The objection should have been delivered to the Court. A copy of this letter was hand-delivered to Respondents on 2-2-81.

Supreme Court Rule 29.4 gives the Clerk authority to grant the first timely requested extension of time but no authority to grant an extension when the request was made after the time for filing of the brief had expired.

The Clerk should not have granted the extension or accepted Respondents' untimely submitted brief on March 14, 1981.

Therefore, Respondents' Brief should not be considered.

Respondents have misrepresented the law, the facts, and misapplied the holdings of the courts in many instances:

QUESTIONS

The lower court erred by appling the wrong statute of limitations to this action. Petitioner wants this Honorable Court to:

1. determine the proper characterization for the RIGHTS protected in this 14th Amendment action; and

2. the applicable statute of limitations in Nevada.

It is a well established principle that those points not argued

are waived:

Respondents have never once argued that the 6 year statute of limitation in Nevada for written contracts is not the applicable statute for this 14th Amendment action. On page 7 of their Brief they agree that Petitioner claims that the six-year statute of limitation, N.R.S. 11.190 (1) (b), which governs actions upon a contract, obligation or liability founded upon an instrument in writing, applies to her action...and that therefore, she is not barred from bringing those claims.

Respondents misrepresented the facts when they omitted that this action was brought pursuant to the 14th Amendment.

Actions based SOLELY on 42 U.S.C. 1983 and/or 1985 present an entirely different case.

Respondents cite no case law wherein the 6 year statute on written CONTRACTS was not applied in a 14th Amendment action.

Respondents agree that Petitioner stands committed to the argument that the six-year statue of limitations for written contract is applicable to her case and yet she does not cite any authorities supportive of that position. This is a misrepresentation of the facts. The law itself is the authority. (Petition 11)

Furthermore, Neither Respondents nor Petitioner found any cases with identical issues; wherein a governmental body breached its contract with a tenured teacher and denied her substantive and procedural due process; where the Petitioner was required by state statute to file a claim with that governing body prior to filing an action; and Respondents not only prevented her from engaging an attorney but also assaulted and threatened her, etc. (Petition pg. 1,2,3*,4,16,24)

These important questions of federal law have not been, but SHOULD BE, SETTLED BY THIS HONORABLE COURT.

2. Since Respondents did not argue or object to the question on Due Process it can be assumed that they agree that Petitioner was denied Due Process by the Board.

Page 2—OPINIONS BELOW

Respondents failed to point out that this case in in federal court because it is the only available court. The Nevada Supreme Court dismissed her action sua sponte and her Petition for a Writ of Certiorari to this Court was denied by this Court

May 31, 1977. (Petition, hereinafter referred to as P–5,25)

Page 2–CONSTITUTIONAL PROVISIONS

Although the heading suggests Constitutional provisions, Respondents failed to address this controlling issue raised by Petitioner–namely: the 14th AMENDMENT. Petitioner's action could have been brought under the 14th Amendment–ALONE. As clearly emphasized in Petitioner's petition (P–17, 18,19) and contrary to Respondents Brief page 13, her fundamental Common Law RIGHTS–life, liberty, property, due process and equal protection are embodied in and guaranteed by the 14th Amendment. 42 U.S.C. ††1983 and 1985 are REMEDIAL statutes applied to make every person who, under color of state law, deprives any citizen of his CONSTITUTIONAL RIGHTS liable to that person. (P–viii, 20)

Page 3–STATEMENT OF THE CASE

Again, Respondents misrepresented the facts by omitting the controlling issue: Plaintiff-petitioner brought this action pursuant to the 14th Amendment because her fundamental Common Law RIGHTS to current and future employment were embodied in and protected by the 14th Amendment.

Respondents omitted the most important point: Petitioner had a written contract with Respondents which they conspired to and succeeded in breaching. As a tenured teacher, having taught more than 7 years, Petitioner had a Statutory RIGHT to continued employment.

If Respondents had not breached their contract with Petitioner, there would be no cause of action.

The 2 most important elements in this case are the CONTRACT and the 14th Amendment. Resondents use the word 'contract' 3 times and the word '14th Amendment' once. Neither Magistrate Ward nor the Court of Appeals use either word.

Again, Respondents misrepresented the facts. Petitioner was removed from the payroll on January 6, 1972, without notice, without a reason, without a hearing and in violation of both state law and constitutional requirements for due process.

Petitioner's employment status between January 6, 1972 and April 20, 1972 is difficult to ascertain. Legally, April 20, 1972, the final day of the hearing,* was the first day that Pet-

itioner could be dismissed. Illegally, Petitioner was dismissed on January 6, 1972, the last day she worked and was paid for working.*

This point is most important because it determines the validity of the subsequent events.

Petitioner contends that all subsequent events are untimely and therefore invalid because: (P–3,4,7,8,9,22,23,24)

1. it was impossible to suspend Petitioner because she was no longer an employee;

2. a suspension 'with pay' is a suspension;

3. a suspension 'without pay' is a termination with possibility for rehire;

4. N.R.S. 391.314 (1) (P–I) granted the superintendent the authority to suspend a teacher without notice, without a hearing, but not 'without pay'. The statute is not specific–it mentions that the teacher shall be reinstated with back pay.

5. N.R.S. 391.314(2) states that the superintendent shall begin proceedings pursuant to N.R.S.391.313.

6. N.R.S. 391.313 required the principal to admonish Petitioner and assist her to correct whatever the cause for dismissal might be for up to 3 months;

7. PETITIONER WAS NEVER EVEN ADMONISHED!

8. it was absolutely impossible to admonish Petitioner who was no longer an employee and assist her in overcoming any alleged problem while Respondents were barring her from her classroom by changing the door locks and thereby barring her from fullfilling her contractual obligation which she was ready, willing and able to meet.

***In Cebular v. Taylor, Las Vegas 1780, Judge Foley decided on February 28, 1974:**

'Plaintiff was clearly prejudiced by the loss of his teaching position and the loss of pay which attended the period of May 14, 1971, the date he was dismissed, and July 22, 1971, the final day of the hearing before the Board and the first day, under Nevada law at that time, that plaintiff could have legally been dismissed.

...this Court concludes that the relevant statutes of Nevada existing at the time of plaintiff's dismissal were unconstitutionally defective as applied to plaintiff...

[Plaintiff's] dismissal is declared to be null and void and it is ordered that he be reinstated...'

9. the 2 untimely 'hearings' fullfilled statutory requirements but lacked substantive and procedural due process; (P–3)

10. Mr. Sanacore, who represented Petitioner at the hearing before the Professional Review Panel was not an attorney but a director of the teachers' union. He refused to hire an attorney or allow Petitioner to hire one;

11. N.R.S. 391.3195(e) requires that the school board render a written decision within 5 day after the hearing; (P–J)

12. Respondents are correct. The untimely 'hearing' before the School Board was April 20, 1972. On April 26, 1972 Mr. Taylor wrote his untimely (1day late) letter which mentioned no date–past, present or future–as the effective date of termination. Legally, Petitioner should have been paid until then. Since she was removed from the payroll January 6, 1972 the effective and illegal date of termination was January 6, 1972 and subsequent events are invalid. (A big 'farce' and the only one not laughing is Petitioner.)

Respondents omitted the law: Petitioner was prohibited by N.R.S. 41.036 and/or 327.325 from commencing an action until after the Notice of Claim had been filed and/or rejected by the School Board. (P–12)

This Honorable Court (Davis v Mills 24 S.Ct. 692) decided:

'A statute of limitations should be construed as a whole–that is, in its entirety...The enactment should be so construed as to make it consistent in all its parts so that proper effect may be given to every section, clause, or part.'

Therefore the claims statue must be applied in this case. The date of accural is January 23, 1973.

This point is incidental if the 6 year statute on contracts is applied and crucial if the 3 year statue is considered.

In certain circumstances the presentation of a claim to a public official or body is in legal effect the institution of an action, or a latter suit relates back to the time of the presentation rather than to the date the suit was brought, so that if the presentation is made in due time the delay of the public official or body on the claim does not affect the claimants right. (Cites omitted.) United States v. Lippitt, 100 U.S. 663; 25 L.Ed. 747; (wherein the War Dept. slept on a claim for 13 years prior to turning it over to the court of claims.)

ARGUMENT

Respondents misrepresent the facts by alleging several defects in Petitioner's petition; however they did not elucidate, enumerate, or present evidence to support this meritless statement.

Petitioner's case fits into every category of reasons why this case should be decided by this Honorable Court. These reasons were specifically set out on pages: P–vi,6,14,15,16,17,19, 20, 22.

I. The table on the right clearly emphasizes the **CONFLICT** not only **BETWEEN THE CIRCUITS** but also the **CONFLICT WITHIN THE CIRCUITS** about the statute of limitations.

A.There are 2 main categories of statutes of limitations which states have enacted to enforce the rights which they created which the lower courts have previously 'borrowed' in 42 U.S. C.1983 actions:

1. 26 states apply: 'liability created by statute';
2. 19 states apply: 'not otherwise provided for';
3. 6 states apply the applicable statute for the RIGHT violated.
4. There is obvioulsy NO UNIFORMITY of categories from which the courts have chosen.

B. There is a wide range in the number of years that the 50 states have provided to limit the enforcement of the RIGHTS which they created , which the lower courts in the 10 circuits have previoulsy 'borrowed' and enforced in 42 U.S.C. 1983 actions:

liability created by statute	not otherwise provided for
years	number of states
20	1	0
15	0	1
10	0	1
6	9	6
5	1	3
4	1	3
3	9	3
2	4	0
1	2	0

II. The table at the right clearly emphasizes the **important question of federal law regarding the statute of limitations, which has**

STATE STATUTE OF LIMITATIONS FOR: LIABILITIES CREATED BY STATUTE–(L) NOT OTHERWISE PROVIDED FOR–(N)

	years
Washington, D.C. 12-301(8)	N–3
Maine 752	N–6
Massachusetts Not Sure	
New Hampshire 508:4	L–6
Puerto Rico	
Rhode Island 9-1-13	N–6
Connecticut 52-581	N-3
New York 214(25)	L–3
Vermont †511T.12-511	N–6
Delaware 10-8106	N–3
New Jersey 2A :14-1	N–6
Pennsylvania Not Sure	
Virgin Islands	
Maryland 5-101	N-3
North Carolina 1-52(2)	L–3
South Carolina 15-3-530(2)	L–6
Virginia Not Sure	
West Virginia 55-2-12	N-2-?
Alabama 6-2-39	L-1
Canal Zone	
Florida 95.11-5(a)	L–3
Georgia 3-704(4360)	L-20
Lousiana 3544	N-10
Mississippi 15-49	N–6
Texas 5529	N–4
Kentucky 413.120	L–5
Ohio 2305.07	L–6
Tennessee Not sure	
Illinois 86-16	N–5
Indiana 34-1-2-3[2-603]	N-15
Wisconsin 893.19(4)	L–6
Michigan 600.5813	N–6

	years
Arkansas 37-213	N–5
Iowa 614.1(80)	N–5
Minnesota 541.05	L–6
Missouri 516.120	L–6
Nebraska 25-206	L–4
North Dakota 28-01-16(2)	L–6
South Dakota 15-2-13(2)	L–6
Alaska 09.10.070(3)	L–2
Arizona 12-541(3)	L–1
California 338(1)	L–3
Idaho 5-218	L–3
Montana 43-2607	L–2
Nevada 11.190-3(a)	L–3
Oregon 12.080	L–6
Washington Not Sure	
Guam	
Hawaii Not sure	
Colorado 13-80-106	L–2
Kansas 60-512(2)	L–3
New Mexico 37-1-4	N–4
Oklahoma 12-95(2)	L–3
Utah 78-12-25	L–4
Wyoming 1-3-115	L–2

Liability created by statute	26
Not otherwise provided for	19
Not sure	6

CONFLICT within the cirucits
CONFLICT between the circuits
NO EQUAL PROTECTION
NO UNIFORMITY
SUPREME COURT NEEDS TO DECIDE

not been, but needs to be settled by this Honorable Court.

A. There is a recognized need for a decision on a uniform statute of limitations and its enforcement:

1. Mr. Justice Brennan set down the opinioin of the Court in Owens v. City of Independence, Mo., 100 S.Ct. 1398, 1407 (1980):

'By its terms, 1983 'creates a species of tort liability that on its face admits no immunities.' Imbler v. Pachtman, 424 U.S. 409, 417; 96 S.Ct. 984, 988; 47 L.Ed.2d 128 (1976). It's language is absolute and unqualified: no mention is made of any privileges, immunities, or defenses that may be asserted. Rather, the act imposes liability upon 'every citizen' who under color of state law or custom, 'subjects, or causes to be subjected, any citizen of the United States...to be deprived of any rights, privileges, or immunities secured by the Constitution and laws.'

2. The dissenting opinion of Justices White, Douglas and Brennan in International U.U.A.A. & A.I.W. v. Hoosier C. Corp, 86 S.Ct. 1107, 1117 (1966) wherein:

'The Court is undoubtedly correct in stating that a uniform limitations period would be desireable...Courts have not always been reluctant to 'create' statutes of limitations, the common-law doctrine of prescription by which judgements are presumed to have been paid after the lapse of 20 years. See Gaines v. Miller, 111 S. 395, 399; 4 S.Ct. 426, 427; 28 L.Ed. 466; (Cites omitted.)

3. Resondents cite Berry v. Arthur, 474 F. Supp. 427 (D.S.D. (1979) wherein the Court held: (page 13)

'Federal courts have applied a wide range of limitations provisions to civil rights actions. The lack of uniformity is due to the variety in state statutes of limitations provisions,...and to different legal approaches in finding the most appropriate state statute.'

4. The 1968 Columbia Law Review article, page 773 submitted: '...Surely, at least one of the purposes behind section 1983 is to penalize those who violate the Constitution and thereby deter future violation. Whatever course the court chooses, its choice will be an improvement over the anarachy of the present law.'

5. The 'common sense' approach of a layman, Petitioner:

B. There are 2 controlling questions which apply to both the 14th Amendment and the federal statute 42 U.S.C. 1983:

1. Whether there is a Constitutional provision or a federal statute which authorizes a statute of limitations that may be applied to limit the enforcement of Petitioner's Constitutional RIGHTS, or whether the Supreme Court could or should 'create' one as suggested above.

2. Whether there is a Constitutional provision or federal statute which authorizes the lower courts to 'borrow' and enforce a state (Nevada) law to void a Constitutional right.

a. The language of the 14th Amendment is clear and absolute: **No State shall make or enforce any law which will abridge** the priviliges or immunities of citizens...

(1) Abridge means to shorten; therefore:

(2) This Clause strictly forbids the state (Nevada) leislators from enacting a statute limiting the Constitutionally guaranteed RIGHTS.

(3) This Clause further forbids the courts from enforcing a statute limiting citizen's Constitutional Rights.

(4) The 14th Amendment does not confer authority on the lower courts to 'borrow' a law which Nevada has enacted in defiance of the 14th Amendment—and apply it for the purpose of voiding the RIGHTS which the 14th Amendment was ratified to protect.

(a) The precedent of 'borrowing' Nevada's statute of limitations should be abolished—like slavery.

(b) This Court should enforce the 14th Amendment and render a decision stating that those 14th Amendment RIGHTS are unconditionally guaranteed and no statute of limitations will be enforced to abridge (shorten) them.

b. The 14th Amendment guarantees Petitioner equal protection of the laws.

(1) No statute of limitations provides equal protection of laws to both Petitioner and the State.

(a) A State law serves to quickly amend, repeal or limit the 14th Amendment, the authority, which can ONLY be changed by another Amendment.

(b) Nevada waits to see if this Court will hold their laws not applicable to the 14th Amendment.

c. This argument is supported by 42 U.S.C. 1983 and this Court's decision in Owens, supra. **'or defenses that may be asserted....the act imposes liability...'**

(1) The statute of limitations is a defense; therefore it may not be asserted.

d. If this court feels that it should 'create' a statute of limitations Georgia's 20 years on liability created by statute; Indiana's 20 years on Contracts and 20 years on prescription provide a uniform number of years in 3 different areas. Nevada's law should equal Georgia's.

Every issue herein presented was presented in the lower courts. Respondents agreed by not arguing the points.

Respondents 42 U.S.C. 1983 cases emphasize these points:

1. Courts are divided on the statute of limitations—Glascoe v. Howell (R-18); Smith v. Cremins (R-11); Berry v. Arthur (R-13).

2. No federal statute of limitations—Nevels (R–10).

3. Majority of their cases based SOLELY on 1983–Mason.

4. Wide range of reasons for 42 U.S.C. 1983 actions–See Owens, supra; & 1968 Columbia Law Review page 764.

5. No Claim filed—Jackson v. Hayakawa (R–14).

6. Discovery marks time action accrues—Cox.

7. Difference in available categories—Hartford, Shouse.

8. Difference in years for same category—Berry, Strung.

9. Liability created by statute not always available—Henig.

10. Liability created by statute not always applied—Carmicle, Madison.

11. Longer rather than shorter statute applied—Mason.

12. A State statute limiting action based on limitless federal statute—Chambers.

NUMEROUS ARGUMENTS SUPPORT TIMELINESS OF THIS ACTION

1. The 14th Amendment strictly forbids State (Nevada) from enacting or enforcing any law that will shorten the priviliges...

2. 42 U.S.C. 1983 mentions no defenses (statute of limitations which may be asserted by State (Respondents).

3. This Court decided that the **statute of limitations should be construed as a whole:**

a. Petitioner's Notice of Claim was required by Nevada law.

b. Petitioner could maintain action on January 23, 1975.

c. Petitioner filed October 7, 1975—within 3 years.

4. Discovery dates time of accrual or June 1, 1975.

5. Petitioner's action filed within 6 years on written contract.

6. This Court decided the **Longer statute should be applied.**

7. Attorney interference by Respondents bars their asserting the statute of limitations as a defense.

8. Governemnt and private **employees RIGHTS equal.**

9. Nevada's 3 year statute does not equal Georgia's 20 years.

Petitioner agrees with majority of circuit judges: **This Court needs to settle the issue of the statute of limitations.** However, ***her primary concern is that her action not be dismissed at the pleadings stage by applying the wrong statute of limitations.***

This Reply Brief is RESPECTFULLY SUBMITTED.

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I received a copy of Petitioner's Reply Brief on Marcy 30, 1981.

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